PETITION AND TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 308

THE UNITED STATES, PETITIONER

vs.

MEMPHIS COTTON OIL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED AUGUST 19, 1932
CERTIORARI GRANTED OCTOBER 17, 1932

SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES, PETITIONER

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 In the Supreme Court of the United States

October term, 1932

No. 308

THE UNITED STATES, PETITIONER

v

MEMPHIS COTTON OIL COMPANY

Petition for a writ of certiorari to the Court of Claims

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims in the above case rendered May 31, 1932, but not yet officially reported.

QUESTION PRESENTED

Whether the respondent may maintain its suit for the refund of 1922 and 1923 taxes where the only claims for refund filed contained no statement of the grounds relied upon but where the commissioner, through a report of the revenue agent, learned facts which if presented in a claim should have caused a refund. The claims were duly filed. The report reached the commissioner after the expiration of the period for filing a claim for refund of the 1923 taxes but before the expiration of the period for filing a claim for the 1923 taxes.

2 STATUTE AND REGULATIONS INVOLVED

R. S. 3228 (a) as reenacted in section 1012 of the revenue act of 1924, c. 234, 43 Stat. 253, 342, provides:

"SEC. 3228. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in section 281 of the revenue act of 1924, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum."

R. S. 3226 as reenacted in section 1113 of the revenue act of 1926, c. 27, 44 Stat. 9, 116, provides:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected

until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

Section 284 of the revenue act of 1926, c. 27, 44 Stat. 9, 66, provides in part as follows:

"SEC. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this act, * * * the revenue act of 1917, the revenue act of 1918, the revenue act of 1921, or the revenue act of 1924, or any such act as amended,
3 the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

"(b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—

"(1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and

"(2) The amount of the credit or refund shall not exceed the portion of the tax paid during the three or four years, respectively, immediately preceding the filing of the claim, or if no claim was filed, then during the three or four years, respectively, immediately preceding the allowance of the credit or refund."

Article 1036 of Regulations 62, promulgated under the revenue act of 1921, provides in part:

"*Claims for refund of taxes erroneously collected.*—Claims by the taxpayer for the refunding of taxes and penalties erroneously or illegally collected shall be made on Form 843. In this case the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath."

Similar regulations have been in force under all the income tax acts.

STATEMENT

Respondent sued in the Court of Claims to recover overpayments of income taxes for the years 1922 and 1923 amounting to $6,496.46. The court found the facts as follows:

The respondent paid the last installment of its 1922 taxes on December 7, 1923. It overpaid this tax in the amount of
4 $1,660.70. The respondent paid the last installment of its 1923 tax on December 6, 1924. It overpaid this tax in the amount of $4,835.76.

A timely claim for refund for 1922 was filed on June 30, 1927. The claim specified no grounds but stated as follows:

"Deponent verily believes that this application should be allowed for the following reasons:

"The statement attached hereto shows—

1. That the amount of tax paid for this year was	$25,626.25
2. And that the correct amount of tax due was	24,296.56
3. And there was overpaid in error	1,329.69
4. Refund of which is requested and with interest as provided by law.	

"The statement attached to this claim by the plaintiff stated as follows:

Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	34,535.75

Computation of tax

Net income	$194,372.46
12½ per cent	24,296.56
Previously paid	25,626.25
Overpaid	1,329.69

On the same day a timely claim for 1923 was filed by the respondent in form identical to that used in the 1922 claim with no statement of the grounds relied on. No further claims were ever filed by the respondent.

The matter was referred by the commissioner to the revenue agent in the respondent's district to examine the respondent's books and make a detailed report to the commissioner. This report was received by the commissioner on February 7, 1928, before the expiration of the time for filing claims for refund in 1923 taxes but after the expiration of the time during which respondent might have filed a claim for refund of 1922 taxes. This report showed that the
5 respondent had been overassessed. The deputy commissioner then wrote the respondent that a certificate of overassessment would issue in due course. Later, after further examination, the deputy commissioner wrote the respondent that as no evidence had been filed to support the general claims filed by the respondent the claims would be rejected. In due course, on October 23, 1929, the

respondent's claims for refund of 1922 and 1923 were rejected on the ground that they were not sufficient under the statute and that, therefore, allowance and refund of the overpayments for 1922 and 1923 were barred by the statute of limitations.

SPECIFICATION OF ERRORS

1. The Court of Claims erred in holding that a timely claim for refund specifying no grounds may support a suit for refund of taxes because the commissioner, through a revenue agent, learned that an overpayment had been made by the respondent.

2. The Court of Claims erred in giving judgment for the respondent.

REASONS FOR GRANTING THE WRIT

1. The United States has filed a petition for a writ of certiorari to the Court of Claims in a similar case, No. 141, The United States v. Factors & Finance Company. The Court of Claims decision in the instant case is based upon its earlier decision in the Factors & Finance Company case. The authorities cited by the Government in that petition, as conflicting with the Court of Claims decision, are also in conflict with the present decision. The
6 questions presented by the two cases are similar. They arise under the same statutory provisions and are of equally great importance in the administration of the revenue acts.

2. The decision in the instant case is an extension of the doctrine laid down by the Court of Claims in the Factors & Finance Company case. In the instant case the taxpayer never filed any paper specifying the nature of its claim for refund. The commissioner's knowledge of grounds on which a claim might have been based came solely through his own agents. As to one of the taxable years in question that knowledge reached the commissioner at a date when the period for filing a claim for refund of taxes for that year had expired. As to both years the taxpayer entirely failed to follow the statutory requirement that the facts relied upon in support of the claim should be clearly set out. If the decision of the Court of Claims in the instant case is correct, the strict requirements of the statute that claims for refund be filed by taxpayers are almost entirely abrogated. In such an event a taxpayer who had filed a general claim within time could secure a refund if entirely without the taxpayer's knowledge the commissioner had learned that an overpayment of taxes had been made by him.

CONCLUSION

Wherefore it is respectfully submitted that this petition should be granted.

THOMAS D. THACHER,
Solicitor General.

AUGUST, 1932.

[Title and index omitted.]

7 IN THE COURT OF CLAIMS OF THE UNITED STATES

No. L–173

MEMPHIS COTTON OIL COMPANY, PLAINTIFF,

vs.

UNITED STATES, DEFENDANT.

I. *Petition*

Filed May 8, 1930

To the honorable the Chief Justice and the Judges of the Court of Claims:

The plaintiff, Memphis Cotton Oil Company, files this its petition and respectfully alleges:

I

That the plaintiff is a corporation organized under the laws of the State of Texas, with principal place of business at Memphis, Texas.

II

That the plaintiff is a citizen of the United States, and has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given
8 encouragement to rebellion against the Government of the United States.

III

That this is a suit against the United States to enforce certain claims for refund of income taxes and interest paid, which said claims are founded upon a law of Congress, and particularly upon a law providing for internal revenue.

IV

That the plaintiff duly made and filed with the collector of internal revenue for the second district of Texas its income-tax returns for the calendar years 1922 and 1923, respectively, as required by the revenue act of 1921 and as required by the rules and regulations of the United States Treasury Department relating thereto; that in its said return for the year 1922 the plaintiff showed a taxable net income of two hundred five thousand ten dollars and two cents ($205,010.02) and an income tax due thereon of twenty-five thousand six hundred twenty-six dollars and twenty-five cents ($25,626.25); that said tax of twenty-five thousand six hundred twenty-

six dollars and twenty-five cents ($25,626.25) was paid by the plaintiff to the said collector as follows: Six thousand two hundred fifty dollars ($6,250.00) on March 10, 1923; six thousand five hundred sixty-three dollars and twelve cents ($6,563.12) on June 11, 1923; six thousand four hundred six dollars and fifty-seven cents
9 ($6,406.57) on September 10th, 1923; and six thousand four hundred six dollars and fifty-six cents ($6,406.56) on December 2nd, 1923; that in its said return for the year 1923 the plaintiff showed a taxable net income of forty-four thousand six hundred thirty-one dollars and eight cents ($44,631.08) and an income tax due thereon of five thousand five hundred seventy-eight dollars and eighty-five cents ($5,578.85); that said tax of five thousand five hundred seventy-eight dollars and eighty-five cents ($5,578.85) was paid by the plaintiff to the said collector as follows: One thousand three hundred ninety-three dollars and ninety-four cents ($1,393.94) on March 13th, 1924; one thousand three hundred ninety-three dollars and ninety-eight cents ($1,393.98) on June 9th, 1924; one thousand three hundred ninety-five dollars and forty-eight cents ($1,395.48) on September 10th, 1924; and one thousand three hundred ninety-five dollars and forty-nine cents ($1,395.49) on December 3rd, 1924.

V

That in its return for the year 1922 the plaintiff erroneously reported its taxable net income for said year as two hundred five thousand ten dollars and two cents ($205,010.02), and erroneously paid an income tax thereon amounting to twenty-five thousand six hundred twenty-six dollars and twenty-five cents ($25,626.25); that the correct taxable net income for the plaintiff for the
10 year 1922 was one hundred eighty-two thousand five hundred fifteen dollars and forty-three cents ($182,515.43), and the correct income tax payable thereon was twenty-three thousand nine hundred sixty-five dollars and fifty-five cents ($23,965.55); that in its return for the year 1923 the plaintiff erroneously reported its taxable net income for said year as forty-four thousand six hundred thirty-one dollars and eight cents ($44,631.08) and erroneously paid an income tax thereon amounting to five thousand five hundred seventy-eight dollars and eighty-five cents ($5,578.85); that the correct taxable net income of the plaintiff for the year 1923 was seven thousand nine hundred forty-five dollars and three cents ($7,945.03), and the correct income tax payable thereon was seven hundred forty-three dollars and thirteen cents ($743.13); that the plaintiff overpaid its income taxes for the years 1922 and 1923 in the respective amounts of one thousand six hundred sixty dollars and seventy cents ($1,660.70), and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76).

VI

That the collection from the plaintiff by said collector of an amount in excess of twenty-three thousand nine hundred sixty-five dollars and fifty-five cents ($23,965.55) for the year 1922, viz, one thousand six hundred sixty dollars and seventy cents ($1,660.70), and of an amount in excess of seven hundred forty-three
11 dollars and thirteen cents ($743.13) for the year 1923, viz, four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), was illegal, erroneous, and contrary to law for that:

Said excess tax of one thousand six hundred sixty dollars and seventy cents ($1,660.70) for the year 1922 was computed upon an alleged taxable net income of two hundred five thousand ten dollars and two cents ($205,010.02), whereas the correct taxable net income of the plaintiff for said year was one hundred eighty-two thousand five hundred fifteen dollars and forty-three cents ($182,515.43); and said excess tax of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76) for the year 1923 was computed upon an alleged taxable net income for forty-four thousand six hundred thirty-one dollars and eight cents ($44,631.08), whereas the correct taxable net income of the plaintiff for said year was seven thousand nine hundred forty-five dollars and three cents ($7,945.03).

VII

That on or about June 30, 1927, the plaintiff duly filed with said collector its claim for refund for the year 1922, on Treasury Department Internal Revenue Service Form 843, and duly demanded the refund and repayment to itself of one thousand three hundred twenty-nine dollars and sixty-nine cents ($1,329.69) for the year 1922, or such greater amount as was legally refundable as
12 provided in said form, together with interest thereon, erroneously collected from the plaintiff by said collector, as aforesaid, all in accordance with the provisions of law in that regard and the regulations of the Secretary of the Treasury established and promulgated in pursuance thereof; that on or about June 30, 1927, the plaintiff duly filed with said collector its claim for refund for the year 1923, on Treasury Department Internal Revenue Service Form 843, and duly demanded the refund and repayment to itself of one thousand eight hundred thirteen dollars and thirty-nine cents ($1,813.39) for the year 1923, or such greater amount as was legally refundable, as provided in said form, together with interest thereon, erroneously collected from the plaintiff by said collector, as aforesaid, all in accordance with the provisions of law in that regard and the regulations of the Secretary of the Treasury established and

promulgated in pursuance thereof; that copies of said claims for refund for the years 1922 and 1923 are attached hereto and made a part hereof and marked " Exhibits Nos. 1 and 2," respectively.

VIII

That in its claim for refund for the year 1922 the plaintiff stated that its net income per books for said year was one hundred fifty-nine thousand eight hundred thirty-six dollars and seventy-one cents ($159,836.71), that said amount should be increased by thirty-four thousand five hundred thirty-five dollars and seventy-
13 five cents ($34,535.75), representing income taxes paid for the year 1921 during the year 1922, and that the taxable net income on which said claim was based was one hundred ninety-four thousand three hundred seventy-two dollars and forty-six cents ($194,372.46) for said year, that in its claim for refund for the year 1922 the plaintiff stated that its net loss per books for said year was three thousand seven hundred eighty-one dollars and one cent ($3,781.01), that an adjustment in the amount of thirty-three thousand nine hundred four dollars and seventy-two cents ($33,-904.72) should be made representing income taxes paid for the year 1922 during the year 1923, and that the taxable net income on which the claim was based was thirty thousand one hundred twenty-three dollars and seventy-one cents ($30,123.71) for said year.

IX

That in order to pass upon the merits of the plaintiff's said claims for refund for the years 1922 and 1923, the Commissioner of Internal Revenue caused the books of the plaintiff for said years to be audited by one C. C. Dubbs, an internal revenue agent of the office of the internal revenue agent in charge at Dallas, Texas; that said internal revenue agent made a report of his findings to the Commissioner of Internal Revenue under date of February 7, 1928; that a copy of said report was furnished to the plaintiff by the internal revenue agent in charge at Dallas, Texas, under date of April
14 12, 1928; that said internal revenue agent found that the taxable net income of the plaintiff for the year 1922 was one hundred eighty-two thousand five hundred fifteen dollars and forty-three cents ($182,515.43), that the correct income tax payable by the plaintiff for said year was twenty-three thousand nine hundred sixty-five dollars and fifty-five cents ($23,965.55), and that the plaintiff's income tax for said year had been over-assessed in the amount of one thousand six hundred sixty dollars and seventy cents ($1,660.70); that said internal revenue agent further found that the taxable net income of the plaintiff for the year 1923 was seven thousand nine hundred forty-five dollars and three cents ($7,945.03), that the correct income tax payable by the plaintiff for said year was seven hundred forty-three dollars and thirteen cents ($743.13),

and that the plaintiff's income tax for said year had been over-assessed in the amount of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76); and that a copy of said report in so far as it refers to the years 1922 and 1923 is attached hereto and marked "Exhibit No. 3."

X

That subsequent to causing the books of the plaintiff for the years 1922 and 1923 to be audited, as aforesaid, C. B. Allen, Deputy Commissioner of Internal Revenue, in charge of income taxes, on August 9, 1928, wrote a letter to the plaintiff in which he sustained said internal revenue agent, C. C. Dubbs, and found that the plaintiff's income taxes for the years 1922 and 1923 had been over-assessed in the amounts of one thousand six hundred sixty dollars and seventy cents ($1,660.70), and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), respectively; that said letter of the Deputy Commissioner of Internal Revenue stated that the plaintiff's said claims for refund for the years 1922 and 1923 had been given careful consideration and adjusted in accordance with the findings outlined in said letter, and that said over-assessments of one thousand six hundred sixty dollars and seventy cents ($1,660.70) and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76) for the years 1922 and 1923, respectively, would be made the subject of certificates of over-assessments, which would reach the plaintiff through the office of the Collector of internal revenue for plaintiff's district; that a copy of the Deputy Commissioner of Internal Revenue's said letter of August 9, 1928, in so far as it pertains to the years 1922 and 1923, is attached hereto and made a part hereof and marked "Exhibit No. 4."

15

XI

That after the receipt of said letter of August 9, 1928, of C. B. Allen, Deputy Commissioner of Internal Revenue, in charge of income taxes, as aforesaid, the plaintiff on or about September 7, 1928, protested against the amount of depreciation allowed for the year 1922 in said letter; that a copy of the portion of Plaintiff's protest pertaining to the year 1922 is as follows:

16

"Year 1922

"According to Exhibit N of the revenue agent's report, the taxpayer was entitled to depreciation for 1922 in the amount of $14,-116.18, or $6,200.83 in addition to the amount claimed in its books. Instead of allowing the additional depreciation of $6,200.83, however, the commissioner took the figures from the 1921 column of Exhibit N and allowed additional depreciation of only $3,506.36. The commissioner accordingly should allow additional depreciation based upon his own computations equal to the difference between $6,200.83 and $3,506.36 for the year 1922."

XII

That on October 13, 1928, the said C. B. Allen, Deputy Commissioner of Internal Revenue, in charge of income taxes, addressed another letter to the plaintiff in which he denied the plaintiff's said protest with respect to depreciation for the year 1922, and sustained his own previous findings as outlined in his letter to the plaintiff under date of August 9, 1928; that said letter of the Deputy Commissioner of Internal Revenue of October 13, 1928, similarly stated that the plaintiff's said claims for refund for the years 1922 and 1923 had been given careful consideration and adjusted in accordance with the findings outlined in said letter, and that said over-assessments of one thousand six hundred sixty dollars
17 and seventy cents ($1,660.70), and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76) for the years 1922 and 1923, respectively, would be made the subject of certificates of overassessments, which would reach the plaintiff through the office of the collector of internal revenue for plaintiff's district; that a copy of the Deputy Commissioner of Internal Revenue's said letter of October 13, 1928, in so far as it pertains to the years 1922 and 1923 is attached hereto and made a part hereof and marked "Exhibit No. 5"; that the said deputy commissioner's letter of October 13, 1928, is identical with his letter of August 9, 1928, in so far as it pertains to the years 1922 and 1923.

XIII

That on January 26, 1929, the said C. B. Allen, Deputy Commissioner of Internal Revenue, in charge of income taxes, addressed another letter to the plaintiff, wherein it was stated that the plaintiff's said claims for refund for the years 1922 and 1923 would be rejected, for the alleged reason that said claims did not comply with article 1304 of Regulations 69, in that said claims did not set forth in detail under oath all facts relied upon in support of said claims; that a copy of the said deputy commissioner's letter of January 29, 1929, is attached hereto and made a part hereof and marked "Exhibit No. 6."

XIV

That on April 2, 1929, without admitting that its original
18 claims for refund for the years 1922 and 1923 were inadequate, the plaintiff amended its said claims for refund for the years 1922 and 1923 by specifically claiming refunds of one thousand six hundred sixty dollars and seventy cents ($1,660.70), and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), respectively, to which was attached a copy of the letter of October 13, 1928, of the Deputy Commissioner of Internal Revenue, in charge of income taxes, which said letter found overassessments

of said respective amounts; that a copy of the plaintiff's said amendment of its claims for refund for the years 1922 and 1923 is attached hereto and made a part hereof, and marked "Exhibit No. 7," except that the copy of the deputy commissioner's said letter of October 13, 1928, is omitted from said Exhibit No 7, the pertinent portion of said letter being set out in Exhibit No. 5, supra.

XV

That the said C. B. Allen was, at the time said respective letters of August 9, 1928, October 13, 1928, and January 26, 1929, were written to the plaintiff, the duly appointed, qualified and acting Deputy Commissioner of Internal Revenue in charge of income taxes, with full power and authority to make the findings and decisions set forth in said letters to the same extent and purpose as though made by the Commissioner of Internal Revenue personally.

19

XVI

That on or about October 23, 1929, the Commissioner of Internal Revenue rejected the plaintiff's said claims for refund and said amended claims for refund for the years 1922 and 1923, pursuant to letter of April 2, 1929, of said Deputy Commissioner of Internal Revenue in charge of income taxes, and notified the plaintiff of such rejection on or about October 23, 1928.

XVII

That the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury promulgated article 1304 of Regulations 69 with respect to claims for refund, which reads in part as follows:

"Claims by the taxpayer for the refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall be made on Form 843. All facts relied upon in support of the claim should be clearly set forth in detail under oath."

That the plaintiff's said original claims for refund for the years 1922 and 1923 complied with the requirements of said article 1304 of Regulations 69 in that (1) plaintiff's said original claim for refund for the year 1922 was made on Form 843 and contained a statement under oath that the net income of the plaintiff per books for said year was one hundred fifty-nine thousand eight hundred thirty-six dollars and seventy-one cents ($159,836.71), and that the plain-

20 tiff's correct taxable net income for said year was one hundred ninety-four thousand three hundred seventy-two dollars and forty-six cents ($194,372.46), the difference of thirty-four thousand five hundred thirty-five dollars and seventy-five cents ($34,535.75) being represented by income taxes paid in said amount by the plaintiff during the year 1922 for the year 1921, and (2) plaintiff's said

original claim for refund for the year 1923 was made on Form 843 and contained a statement under oath that the net loss of plaintiff per books for said year was three thousand seven hundred eighty-one dollars and one cent ($3,781.01), and that the plaintiff's correct taxable net income was thirty thousand one hundred twenty-three dollars and seventy-one cents ($30,123.71), the difference of thirty-three thousand nine hundred four dollars and seventy-two cents ($33,904.72) being represented by income taxes paid by the plaintiff during the year 1923 for the year 1922; that the statements made in plaintiff's said original claims for refund for the years 1922 and 1923 were sufficient to apprise the Commissioner of Internal Revenue of the nature of plaintiff's said claims, as is evidenced by the fact that the Commissioner of Internal Revenue audited the books of the plaintiff and passed upon the merits of the plaintiff's said original claims for refund for the years 1922 and 1923, and found and determined the overassessments for said years as set forth in Paragraphs IX, X, and XII, supra.

21

XVIII

That if the plaintiff's said original claims for refund for the years 1922 and 1923 did not set forth in detail under oath all facts relied upon by it in support of said claims, in compliance with said article 1304 of Regulations 69, the action of the Commissioner of Internal Revenue in causing the books of the plaintiff to be audited by a revenue agent, as set forth in Paragraph IX, supra, and the action of the Deputy Commissioner of Internal Revenue, in charge of income taxes, in finding the over-assessments for the years 1922 and 1923, as set forth in Paragraphs X and XII, supra, constituted a waiver on the part of the Commissioner of Internal Revenue of the requirements of said article 1304 of Regulations 69.

XIX

That if the plaintiff's said original claims for refund for the years 1922 and 1923 did not comply with said article 1304 of Regulations 69, the plaintiff's amended claims for refund for said years, filed on April 2, 1929, as set out in Paragraph XIV, supra, did comply with said article 1304 of Regulations 69, in that plaintiff's said amended claims for refund contained a detailed statement of the facts relied upon, to wit, a copy of the portion of the letter of October 13, 1928, of the Deputy Commissioner of Internal Revenue in charge of income taxes, pertaining to the years 1922 and 1923.

22

XX

That sections 284 (a) and 284 (b) (1) of the revenue act of 1926 apply to the allowance and filing of claims for refund of income

taxes for the years 1922 and 1923; that the applicable portions of said sections read as follows:

"SEC. 284. (a). Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by * * * the revenue act of 1921, * * * or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

"SEC. 284. (b) (1). No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and"

that said sections require the filing of claims for refund for the overpayment of income taxes made for the years 1922 and 1923; that said sections do not require all facts relied upon by the plaintiff in support of its said claims for 1922 and 1923 to be clearly set forth in detail under oath as specified by said art. 1304 of Reg. 69; that claims for refund for said years 1922 and 1923 sufficiently comply with said sec. 284 (a) and sec. 284 (b) (1) of the revenue act of 1926, if they set forth the amount of net income or net loss for said respective years, per the books of the taxpayer, with necessary adjustments to show the taxable net income for said years; that the plaintiff's said claims for refund for the years 1922 and 1923 compiled with said secs. 284 (a) and 284 (b) of the revenue act of 1926, for that (1) said claims made demand for certain overpayments of income taxes for said respective years; (2) said claims set forth the net income and net loss, per the books of the plaintiff, for said respective years 1922 and 1923; (3) said claims made certain adjustments on account of income taxes paid during said respective years; and (4) said claims disclosed the taxable net income of the plaintiff for said respective years, as set forth in more detail in Paragraphs VII and VIII, supra; that if said article 1304 of Regulations 69 requires the plaintiff to file with its claims for refund for the years 1922 and 1923 evidence in addition to that filed with said claims, said article 1304 of Regulations 69 is repugnant to said sections 284 (a) and 284 (b) of the revenue act of 1926, and, therefore, void and of no force and effect.

23

XXI

That no action has been taken on the plaintiff's said claims for refund by Congress or by any of the departments or in any court except as above set forth. Claimant is the owner of said claims for refund and has made no assignment thereof, or of any part thereof, or of any interest therein.

24 XXII

That although duly demanded, said sums of one thousand six hundred sixty dollars and seventy cents ($1,660.70), representing overpayment of income taxes made for the year 1922, and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), representing overpayment of income taxes made for the year 1923, have not, nor has any part thereof, been paid to the plaintiff, and there is now due and owing to the plaintiff from the defendants, after allowing all just credits and offsets, the sum of one thousand six hundred sixty dollars and seventy cents ($1,660.70), representing overpayment of income taxes made for the year 1922, and the sum of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), representing overpayment of income taxes for the year 1923, with interest on said sum of one thousand six hundred sixty dollars and seventy cents ($1,660.70) at the rate of six per cent (6%) from December 2, 1923, and interest on said sum of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76) at the rate of six per cent (6%) as follows:

On six hundred fifty dollars and eighty-one cents ($650.81) from March 13, 1924; on one thousand three hundred ninety-three dollars and ninety-eight cents ($1,393.98) from June 9, 1924; on one thousand three hundred ninety-five dollars and forty-eight cents ($1,395.48) from September 10, 1924; and on one thousand three hundred ninety-five dollars and forty-nine cents ($1,395.49) from December 3, 1924.

25 Wherefore, the plaintiff demands judgment against the United States for the sum of one thousand six hundred sixty dollars and seventy cents ($1,660.70), with interest thereon at the rate of six per cent (6%) from December 2, 1923, and the sum of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), with interest thereon at the rate of six per cent (6%) as follows: On six hundred fifty dollars and eighty-one cents ($650.81) from March 13, 1924; on one thousand three hundred ninety-three dollars and ninety-eight cents ($1,393.98) from June 9, 1924; on one thousand three hundred ninety-five dollars and forty-eight cents ($1,395.48) from September 10, 1924; and on one thousand three hundred ninety-five dollars and forty-nine cents ($1,395.49) from December 3, 1924; together with the costs and disbursements of this action.

WALTER E. BARTON,
Investment Bldg., Washington, D. C.,
Attorney for Plaintiff.

R. C. WINTERS,
Park Building, Abilene, Texas,
RAYMOND C. CUSHWA,
Investment Bldg., Washington, D. C.,
Of Counsel.

26 [*Duly sworn to by F. N. Foxhall; jurat omitted in printing.*]

27

EXHIBIT NO. "1"—to petition

(EXECUTE SEPARATE FORM FOR EACH TAX PERIOD)

TREASURY DEPARTMENT
(For Use of INTERNAL REVENUE SERVICE)
Form 843—Rev., 1929
Comptroller General U.S.
January 10, 1923

CLAIM FOR

- [ ] ABATEMENT OF TAX ASSESSED
- [ ] CREDIT AGAINST OUTSTANDING ASSESSMENTS
- [XXX] REFUND OF TAXES ILLEGALLY COLLECTED
- [ ] REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

IMPORTANT
File with Collector of Internal Revenue whose assessment you seek. Not acceptable unless previously filed so.

COLLECTOR'S NOTATION
District
Account number
Date received
EXHIBIT NO. "1"
Stamp here
Collector of Internal Revenue

State of TEXAS, ss:
County of HALL,

NOTICE TO COLLECTOR
Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit
Stamp here

TYPE or PRINT

MEMPHIS COTTON OIL COMPANY
(Name of taxpayer or purchaser of stamps.)

(Residence—give street and number as well as city or town and State.)

MEMPHIS, TEXAS.
(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged Cotton Seed Crushers
2. Character of assessment or tax Income Tax
(State for or upon what the tax was assessed or the stamps affixed.)
3. Amount of assessment or stamps purchased
4. Reduction of Tax Liability requested (Income and Profits Tax)
5. Amount to be abated
6. Amount to be refunded (or such greater amount as is legally refundable)
7. Dates of payment (see Collector's receipts or indorsements of canceled checks)
(If statement covers income tax liability, items 8-14, inclusive, must be answered.)
8. District in which return (if any) was filed Dallas
9. District in which unpaid assessment appears
10. Amount of overpayment claimed as credit
11. Unpaid assessment against which credit is asked; period from to

PERIOD	YEAR
From Jan. 1,	1922
To Dec. 31,	1922
	$ 25,626.25
	$ 1,329.69
	$
	$ 1,329.69
	$
	$

Deponent verily believes that this application should be allowed for the following reasons:

The Statement attached hereto shows:

1. That the amount of tax paid for this year was $25,626.25

2. And that the correct amount of tax due was 24,296.56

3. And there was overpaid in error $ 1,329.69

4. Refund of which is requested and with interest as provided by law.

(Attach additional sheets if necessary.)

Sworn to and subscribed before me this 30th day
December 1926

Signed:

(Signed): JOHN M. DEATHER
(SEAL) Notary Public, Hall Co. Texas.
(Title)

MEMPHIS COTTON OIL CO. (SEAL)
Signed:
By: F. N. Foxhall
President.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

137675—32——2

28

MEMPHIS COTTON OIL COMPANY
Memphis, Texas
Calendar Year 1922

Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	$34,535.75

Viz.:

Income tax paid, $34,535.75.

Computation of Tax

Net income	$194,372.46
12½%	24,296.56
Previously paid	25,626.25
Overpaid	$1,329.69

29

EXHIBIT NO. "2"—to petition

(EXECUTE SEPARATE FORM FOR EACH TAX PERIOD)

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Form 843—Jan., 1923
Commissioner's Council, U.A.
January 18, 1923

IMPORTANT
File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

CLAIM FOR

- ☐ ABATEMENT OF TAX ASSESSED
- ☐ CREDIT AGAINST OUTSTANDING ASSESSMENTS
- XXX REFUND OF TAXES ILLEGALLY COLLECTED
- ☐ REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

COLLECTOR'S NOTATION
Amount
Assessed number
Date received
EXHIBIT NO. "2"
Name here
Collector of Internal Revenue

State of TEXAS } ss:
County of HALL }

NOTICE TO COLLECTOR
Collector must indicate in block above any kind of claim, except in Income Tax cases.

Date received by Asst. Commissioner
Name here

MEMPHIS COTTON OIL COMPANY
(Name of taxpayer or purchaser of stamps.)

TYPE OR PRINT

(Residence—give street and number as well as city or town and State.)
MEMPHIS, TEXAS.
(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

	PERIOD	YEAR
	From Jan. 1	19 22
	To Dec. 31,	19 22

1. Business in which engaged Cotton Seed Crushers
2. Character of assessment or tax Income Tax
(State for or upon what the tax was assessed or the stamps affixed.)
3. Amount of assessment or stamps purchased $5,578.85
4. Reduction of Tax Liability requested (Income and Profits Tax) $1,813.39
5. Amount to be abated ..... $
6. Amount to be refunded (or such greater amount as is legally refundable) $1,813.39
7. Date of payment (see Collector's receipts or indorsements of canceled checks) .....
(If statement covers income tax liability, items 8-11, inclusive, must be answered.)
8. District in which return (if any) was filed Dallas
9. District in which unpaid assessment appears .....
10. Amount of overpayment claimed as credit ..... $
11. Unpaid assessment against which credit is asked; period from ..... to ..... $

Deponent verily believes that this application should be allowed for the following reasons:

The Statement attached hereto shows:

1. The tax paid as $5,578.85

2. The correct tax due, as $3,765.46

3. Tax overpaid in error $1,813.39

4. Refund of which is requested and with interest as provided by law.

(Attach additional sheets if necessary.)

Sworn to and subscribed before me this 30th day of December, 19 26

Signed: (SEAL)
Signed]: JOHN M. BEAVER
(SEAL) Notary Public, Hall Co. Texas
(Title.)

MEMPHIS COTTON OIL CO.
Signed:
By: E. N. FOXHALL,
President.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

30

MEMPHIS COTTON OIL COMPANY
Memphis, Texas
Calendar Year 1923

Net loss per books	$3,781.01
Taxable net income	30,123.71
Difference	$33,904.72

Viz.:
Income taxes, $33,904.72.

Computation of Tax

Net income	$30,123.71
Tax 12½%	3,765.46
Tax paid	5,578.85
Overpaid	$1,813.39

EXHIBIT NO. "3"—to petition

Name—Memphis Cotton Oil Co.
Schedule 4 Year ended 12/31/22

Net Income

Net income as disclosed by books		$152,007.90
As corrected		182,515.43
Net adjustment		30,507.53
Unallowable deductions and additional income:		
(a) Machinery charged to Repairs	$12,031.97	
(b) Frame Bldg. charged to Repairs	742.15	
(c) Profit on Sale Hedley Lots	600.00	
(d) F. I. Taxes paid	34,535.75	
Total		$47,909.87
Non-taxable income and additional deductions:		
(e) Income from Gins	$2,117.42	
(f) Income from Partnerships	7,749.33	
(g) Depreciation Adjustment	3,506.36	
(h) Loss Sale of Hedley Gin Interest	889.16	
(i) Loss from Liquidations Rosamond Gin Co.	3,140.07	
Total		$17,402.34
Net adjustment as above		$30,507.53

31 Name—Memphis Cotton Oil Co.

Schedule 4–A

Explanation of items changed

(a) Machinery charged to repair account on books, but not deducted in income-tax return. During the period ended 5/31/24 an adjustment was made on the books to capitalize these items. See Item (f), Schedule 10.

(b) The cost of an addition to the office building charged to repair account on the books. An adjustment was made on 5/5/24 which capitalized $158.50 of this amount, which was the labor item. No adjustment was made for the $583.65 material and supplies used.

(c) During the taxable year lots at Hedley, Texas, were sold for $600.00, and the sale price credited to permanent investment account on the books. The examining officer, being unable to find any cost on the books, has closed the entire amount to profit and loss.

(d) Federal income taxes paid during the year, not an allowable deduction from gross income. (Article 561, Regulations 62.)

(e) See Exhibit R attached. Entirely separate books were kept on the gins owned by the mill, and only cash withdrawn or paid in during the year appears as profit or loss on the mill books.

(f) Income from partnerships is changed to agree with reports of examination submitted herewith. (See Exhibit P.) Partnership investment account on the mill books was not adjusted each
32 year for profit or loss, only actual cash withdrawn or paid in being carried to profit and loss.

(g) Additional depreciation allowed. See Exhibit N, depreciation schedule attached.

(h) As at 6/1/22, taxpayer sold 55% of the 50% interest which it owned in the Hedley Gin Company to the Farmers Equity Union of Hedley, Texas. The sale price was credited to gin investment account on the books and no profit or loss computed. The adjustment is as follows:

Memphis C. O. Co's investment A/c in Hedley Gin Company as at 5/31/22 (see partnership report)	$11,616.66
Value of 55% of interest, as sold	6,389.16
Sale price	5,500.00
Loss on sale	889.16

(i) The Rosamond Gin Company, a corporation in which taxpayer was a stockholder, liquidated during 1922. Taxpayer received in liquidation, cash and other assets having a value of less than the cost of the stock. No change was made in gin investment account, to which the cost of the stock had been charged on the books, the

cash received being credited to profit and loss. The adjustment is computed as follows:

Cost of Rosamond Gin Company stock		$47,245.17
Received in Liquidations:		
½ interest in Memphis Gin	$9,946.15	
½ interest in Lodge Gin	23,887.86	
½ interest in Lakeview Gin	10,271.07	
Cash	2,349.05	
		46,454.15
Loss from liquidation		791.02
Profit reported		2,349.05
Net adjustment		3,140.07

33 NOTE.—The book value of the assets distributed is accepted as being the true market value. As a matter of fact, any change in values here would, as a result of subsequent happenings, have very little effect on the tax liability for the period examined. Later, interests in the Memphis and Lakeview gins were sold and the Lodge gin burned.

Schedule 4-B

Income subject to tax at prior year's rates	
Net income from Schedule 4	$182,515.43
Income subject to tax at 1921 rates (7/12 of $5,890.60, income from partnerships with fiscal year closing of May 31st), 1922	3,436.18
Income subject to tax at 1922 rates	179,079.25

Name—Memphis Cotton Oil Co.

Schedule No. 5, year ended 12/31/22

Computation of invested capital

Capital stock		$200,000.00
Surplus		198,578.42
Total corrected balance sheet beginning of year		398,578.42
Deductions:		
(a) Add'l 1917 F. I. tax	$8,278.48	
(b) Add'l 1918 F. I. tax	25,927.80	
(c) Add'l 1919 F. I. tax	6,927.53	
(d) Add'l 1920 F. I. tax	1,153.43	
(e) F. I. tax for 1921 ($25,277.36 pror'd)	10,892.67	
Total (deduct from above)		53,179.91
As shown on exhibit		345,398.51

34 Schedule 5-A

Explanation of items changed

(a), (b), (c), and (d) Invested capital is reduced by additional F. I. taxes assessed for years 1917, 1918, 1919, and 1920, but unpaid on 12/31/20.

(e) Invested capital is reduced by F. I. taxes for 1921, $25,774.51, prorated in accordance with article 845, Regulations 62.

Unchanged

No adjustment is made for inadmissibles for the reason that it is apparent that further adjustment will not affect the tax liability, as the tax will be computed under the highest bracket.

Name—Memphis Cotton Oil Co.

Schedule No. 6, year ended 12/31/22

Computation of tax, 1921 rates—Excess profits tax

Net income, schedule	$182,515.43
Income subject to tax at 1921 rates	3,436.18
Invested capital, Schedule 5	345,398.51
8% of invested capital	27,631.88
Plus exemption, $3,000.00	3,000.00
Total credit	30,631.88

	Income	Credit	Taxable	Rate	Tax
20%	$69,079.70	$30,631.88		20	
Balance	113,436.18		$3,436.18	40	$1,374.47
Total					1,374.47

35 *Income tax*

Net income at 1921 rates	$3,436.18	
Less: Excess profits tax	1,374.47	
Balance taxable at 10%	2,061.71	
Income tax		$206.17
Total income and excess profits tax at 1921 rates		1,580.64

Name of corporation: Memphis Cotton Oil Company

Schedule No. 7

Computation of tax—1922 and subsequent years

Year period ended 12/31/22

Income tax

Net income for taxable year at 1922 rates Sched. 4–B	$179,079.25
Balance subject to tax at 1922 rates	179,079.25
Income and excess profits tax at 1921 rates	1,580.64
Total tax	23,935.55
Total tax assessable	23,965.55
Tax previously assessed	25,626.25
(Overassessment)	$1,660.70

Schedule 8, year ended 12/31/23

Net income

Net income as disclosed by books (loss), return		$31,309.21
As corrected		7,945.03
Net adjustment		39,254.24
(a) Profit on sale interest Quitaque Gin	$655.41	
(b) Bad debts	20,747.24	
(c) F. I. taxes paid	33,904.72	
Total		55,337.37
Nontaxable income and additional deductions:		
(d) Depreciation adjustment	$6,200.83	
(e) Income from gins	967.20	
(f) Income from partnerships	8,915.10	
Total		16,083.13
Net adjustment as above		39,254.24

36

Schedule 8–A

Explanation of items changed

(a) A ¼ interest in the Quitaque Gin as of 6/1/23 was sold to J. T. Nail for $3,750.00. The entire sale price was credited to gin investment account on the books and no profit or loss computed. The adjustment is as follows:

Memphis C. O. Co's investment in Quitaque Gin as at 5/31/23 (see Exhibit T)	$12,258.38
Cost of ¼ interest sold	3,064.59
Sale price	3,750.00
Profit on sale	685.41

(b) On 3/27/23, the taxpayer acquired E. T. Rosamond's ½ interest in the Lakeview, Lodge and Memphis gins and also, certain lots in Memphis, Texas, for the cancellation of $58,724.95 in notes. Gin investment account was charged with $37,977.71 and the balance of the notes were charged to profit and loss. No formal foreclosure proceedings were instituted. The consideration specified in the deeds was the cancellation of the notes. There is no evidence to show that the properties transferred were not worth the full amount of the indebtedness cancelled. Accordingly, the loss is disallowed.

In allocating the cost to the three gins and the other real estate, the examining officer has taken into consideration the prices for which inerests in the Memphis and Lakeview gins were sold in 1925 and 1926, respectively. Owing to the fact that interests in these two gins were sold and the Lodge Gin was destroyed by fire in

37 1925, the adjustment does not result in a very material difference in tax liability for the period of years examined.

The $58,724.95 cost is allocated as follows:

Memphis lots	$4,000.00
Lakeview Gin	13,911.02
Lodge Gin	23,100.62
Memphis Gin	17,713.31
Total	58,724.95

(c) Federal income taxes paid during the taxable year, not allowable deductions from gross income:

Federal income tax for 1922 paid in 1923	$25,626.25
Additional F. I. tax for 1917, paid in 1923	8,278.47
Total	33,904.72

(d) Additional depreciation allowed. See Exhibit N, depreciation schedule.

(e) Income from gins is changed to agree with Exhibit R attached.

(f) Income from partnerships is changed to agree with reports of examination submitted herewith. See Exhibit P attached.

Schedule No. 9

Computation of tax—1922 and subsequent years

Year ended 12/31/23

Income tax

Net income for taxable year	$7,945.03
Exemption	2,000.00
Balance subject to tax at 12½%	5,945.03
Income tax	743.13
Total tax	743.13
Total tax assessable	743.13
Tax previously assessed	5,578.89
Overassessment	4,835.76

38 *Exhibit No. "4"—to petition*

IT:AR:A-4-PAB AUGUST 9, 1928.

MEMPHIS COTTON OIL COMPANY,
Memphis, Texas.

SIRS: A review of the report submitted by the internal revenue agent in charge at Dallas, Texas, covering your tax liability for the years 1921, 1922, and 1923, and the fiscal year ended May 31, 1926, discloses a deficiency of $5,470.51 for the fiscal year ended May 31, 1926, and an overassessment of $11,288.76 for the years 1921, 1922, and 1923.

Enclosed you will find a statement indicating adjustments proposed by this office based upon recommendations of the revenue agent above indicated. If you acquiesce in the proposed adjustments as shown in this letter and the accompanying statement, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:AR:A-4-PAB.

If, however, you do not acquiesce, you are granted 15 days from the date of this letter within which to present a protest with the internal revenue agent in charge, 1512 Allen Building, at Dallas, Texas, against the adjustments proposed herein. The protest and

any additional statements of facts must be executed in triplicate, under oath, and contain the following information:

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation
39 the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed adjustments with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; and (g) in case the taxpayer desires a hearing, a statement to that effect.

If a protest is filed, any additional evidence or briefs of argument submitted will be given careful consideration, and if the commissioner finally determines that there is a deficiency, you will be advised thereof by registered mail in accordance with the provisions of section 274 of the revenue act of 1926. Should you not agree to the deficiency as finally determined by the commissioner, you will be allowed 60 days from the date of mailing of the registered letter (not counting Sunday as the sixtieth day) in which to file a petition with the United States Board of Tax Appeals for redetermination of the deficiency.

Respectfully,

C. B. ALLEN,
Deputy Commissioner.
By
Head of Division.

MEC–1
Enclosures:
Statement
Form 866
Form 882

40 Memphis Cotton Oil Company—Statement

1922

Net income as shown by books		$152,007.90
Add:		
1. Machinery charged to repairs		12,031.97
2. Frame building charged to repairs		742.15
3. Profit on sale of Hedley lots		600.00
4. Federal income taxes		34,535.75
		199,917.77
Deduct:		
5. Income from gins	$2,117.42	
6. Income from partnerships	7,749.33	
7. Depreciation	3,506.36	
8. Loss on sale of Hedley Gin	889.16	
9. Loss—Rosamond Gin Co. stock	3,140.07	
		17,402.34
Net income as adjusted		182,515.43

Explanation of changes

1 and 2. See Explanation No. 4 under 1921.

3. Profit on sale of lots has been computed in accordance with article 1561, Regulations 62, as follows:

Cost	None.
Sale Price	$600.00
Profit	600.00

4. See Explanation No. 1 under 1921.

5. See Explanation No. 2 under 1921.

6. See Explanation No. 6 under 1921.

7. See Explanation No. 7 under 1921.

8. Loss on sale of Hedley Gin has been allowed in accordance with article 1561, Regulations 62, as follows:

Value of interest sold	$6,389.16
Sale price	5,500.00
Loss	889.16

41 9. Loss on stock of Rosamond Gin Company has been allowed in accordance with article 144, Regulations 62, as follows:

Cost		$47,245.17
Received		46,454.15
Loss adjusted		791.02
Profit reported		2,349.05
Loss allowed		3,140.07

Income subject to tax at 1921 rates

Net income	$182,515.43
Income subject to tax at 1921 rates (7/12 of $5,890.60 income from partnerships fiscal year ended May 31, 1922	3,436.18
Income subject to tax at 1922 rates	179,079.25

Invested capital

Invested capital books		$320,972.87
Add: Adjustments as shown on corrected balance sheet attached, Exhibit B		77,605.55
Total		398,578.42
Deduct:		
1. Prior years' taxes	$42,287.24	
2. 1921 taxes prorated	10,978.02	
		53,265.26
Invested capital corrected		345,313.16

Explanation of changes

1 and 2. See Explanations No. 1 and No. 2 under 1921.

Excess profits credit

8%	$27,625.05
Exemption	3,000.00
	30,625.05

	Income	Credit	Balance	Rate	Profits tax
20 per cent	$69,062.63	$30,625.05		20%	
	113,452.80		$3,436.18	40%	$1,374.47

42 *Income tax*

Net income, subject to 1921 rates	$3,438.18	
Less: Excess profits tax	1,374.47	
Balance taxable at 10%	2,061.71	
Tax at 10%		$206.17
Total tax (1921 rates)		1,580.64
1922 rates:		
Net income as adjusted, subject to tax at 12½%		179,079.25
Tax at 12½%		22,384.91
Tax at 1921 rates		1,580.64
Tax at 1922 rates		22,384.91
Total tax		23,965.55
Tax previously assessed		25,626.25
Overassessment		1,660.70

1923

Net loss as shown by books		31,309.21
Add:		
1. Profit on sale of Quitaque gin	$685.41	
2. Bad debts	20,747.24	
3. Federal income taxes	33,904.72	
		55,337.37
Balance		24,028.16
Deduct:		
4. Depreciation	6,200.83	
5. Income from gins	967.20	
6. Income from partnership	8,915.10	
		16,083.13
Net income as adjusted		7,945.03

Explanation of changes

1. Profit on sale of Quitaque Gin has been computed in accordance with article 1561, Regulations 62, as follows:

Cost	$3,064.59
Sale price	3,750.00
Profit	685.41

43 2. Bad debts have been disallowed since these amounts have not been determined worthless and charged off in accordance with article 151, Regulations 62.

3. See Explanation No. 1 under 1921.

4. See Explanation No. 7 under 1921.

5. See Explanation No. 2 under 1921.

6. See Explanation No. 6 under 1921.

Computation of tax

Net income as adjusted	$7,945.03
Less: Exemption	2,000.00
Balance taxable at 12½%	5,945.03
Tax at 12½%	743.13
Tax previously assessed	5,578.89
Overassessment	4,835.76

Your claims for refund of $6,148.61, $1,329.69, and $1,813.39 for the years 1921, 1922, and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements.

The overassessments shown herein will be made the subject of certificates of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 284 of the revenue act of 1926.

The right of petition as indicated on page one of this letter refers only to any deficiency in tax indicated herein, inasmuch as there is no provision in the revenue act of 1926 granting the right of petition against the determination of any overassessment found upon a review of your return.

44 Payment should not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him.

Exhibit No. "5" to petition

IT:AR:A-4-PAB

OCTOBER 13, 1928.

MEMPHIS COTTON OIL COMPANY,
Memphis, Texas.

SIRS: A review of the report submitted by the internal revenue agent in charge, Dallas, Texas, covering your tax liability for the years 1921, 1922, 1923 and the fiscal year ended May 31, 1926, discloses a deficiency of $5,470.51 for the fiscal year ended May 31, 1926, and an overassessment of $11,288.76 for the years 1921, 1922 and 1923.

The recommendations of the revenue agent above indicated have been approved by this office after consideration of the protest filed with said agent in connection therewith. If you acquiesce in the proposed tax liability as shown in this letter and the accompanying statement, and desire to make this determination final, you are requested to execute the enclosed Form 866 and forward both original

and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:AR:A-4-PAB.

If, however, you do not acquiesce in all of the proposed changes, you will be afforded an opportunity for a hearing in the Unit at Washington upon request.

If no reply is received within 15 days from the date of
45 this letter it will be assumed that no hearing is desired and the bureau will proceed to close the case in the usual manner.

If after said hearing and consideration by this office of evidence or briefs of argument submitted, the commissioner finally determines that there is a deficiency, you will be advised thereof by registered mail. Should you not agree to the deficiency as finally determined by the commissioner, you will be allowed 60 days from the date of mailing of the registered letter (not counting Sunday as the sixtieth day) in which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Respectfully,

C. B. ALLEN,
Deputy Commissioner.
By
Head of Division.

Enclosures:
Statement
Form 866
Form 882

Memphis Cotton Oil Company—Statement

1922

Net income as shown by books		$152,007.90
Add:		
1. Machinery charged to repairs		12,031.97
2. Frame building charged to repairs		742.15
3. Profit on sale of Hedley lots		600.00
4. Federal income taxes		34,535.75
		199,917.77
Deduct:		
5. Income from gins	$2,117.42	
6. Income from partnerships	7,749.33	
7. Depreciation	3,506.36	
8. Loss on sale of Hedley Gin	889.16	
9. Loss—Rosamond Gin Co. stock	3,140.07	
		17,402.34
Net income as adjusted		182,515.43

46 Explanation of changes

1 and 2. See Explanation No. 4 under 1921.

3. Profit on sale of lots has been computed in accordance with Article 1561, Regulations 62, as follows:

Cost	None.
Sale price	$600.00
Profit	600.00

4. See Explanation No. 1 under 1921.
5. See Explanation No. 2 under 1921.
6. See Explanation No. 6 under 1921.
7. See Explanation No. 7 under 1921.
8. Loss on sale of Hedley Gin has been allowed in accordance with Article 1561, Regulations 62, as follows:

Value of interest sold	$6,389.16
Sale price	5,500.00
Loss	889.16

9. Loss on stock of Rosamond Gin Company has been allowed in accordance with Article 144, Regulations 62, as follows:

Cost	$47,245.17
Received	46,454.15
Loss adjusted	791.02
Profit reported	2,349.05
Loss allowed	3,140.07

Income subject to tax at 1921 rates

Net income	182,515.43
Income subject to tax at 1921 rates (7/12 of $5,890.60 income from partnerships fiscal year ended May 31, 1922)	3,436.18
Income subject to tax at 1922 rates	179,079.25

47

Invested capital

Invested capital books		$320,972.87
Add: Adjustments as shown on corrected balance sheet attached, Exhibit B		77,605.55
Total		398,578.42
Deduct:		
1. Prior years' taxes	$42,287.24	
2. 1921 taxes prorated	10,978.02	
		53,265.26
Invested capital corrected		345,313.16

Explanation of changes

1 and 2. See Explanations No. 1 and No. 2 under 1921.

Excess profits credit

8%	$27,625.05
Exemption	3,000.00
	30,625.05

	Income	Credit	Balance	Rate	Profits tax
20%	$69,062.63	$30,625.05		20%	
	113,452.80		$3,436.18	40%	$1,374.47

Income tax

Net income, subject to 1921 rates	$3,436.18	
Less: Excess profits tax	1,374.47	
Balance taxable at 10%	2,061.71	
Tax at 10%		$206.17
Total tax (1921 rates)		1,580.64
1922 rates:		
Net income as adjusted, subject to tax at 12½%		179,079.25
Tax at 12½%		22,384.91
Tax at 1921 rates		1,580.64
Tax at 1922 rates		22,384.91
Total tax		23,965.55
Tax previously assessed		25,626.25
Overassessment		1,660.70

48 *1923*

Net loss as shown by books		$31,309.21
Add:		
1. Profit on sale of Quitaque Gin	$685.41	
2. Bad debts	20,747.24	
3. Federal income tax	33,904.72	
		55,337.37
Balance		24,028.16
Deduct:		
4. Depreciation	6,200.83	
5. Income from gins	967.20	
6. Income from partnership	8,915.10	
		16,083.13
Net income as adjusted		7,945.03

Explanation of changes

1. Profit on sale of Quitaque Gin has been computed in accordance with article 1561, Regulations 62, as follows:

Cost	$3,064.59
Sale price	3,750.00
Profit	685.41

2. Bad debts have been disallowed since these amounts have not been determined worthless and charged off in accordance with article 151, Regulations 62.

3. See Explanation No. 1 under 1921.

4. See Explanation No. 7 under 1921.

5. See Explanation No. 2 under 1921.

6. See Explanation No. 6 under 1921.

49 *Computation of tax*

Net income as adjusted	$7,945.03
Less: Exemption	2,000.00
Balance taxable at 12½%	5,945.03
Tax at 12½%	743.13
Tax previously assessed	5,578.89
Overassessment	4,835.76

Your claims for refund of $6,148.61, $1,329.69, and $1,813.39 for the years 1921, 1922, and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements.

The overassessments shown herein will be made the subject of certificates of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 284 of the revenue act of 1926.

The right of petition as indicated on page one of this letter refers only to any deficiency in tax indicated herein, inasmuch as there is no provision in the revenue act of 1926 granting the right of petition against the determination of any overassessment found upon a review of your return.

Payment should not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him.

50 *Exhibit No. "6" to petition*

IT:AR:A-4-PAB JANUARY 26, 1929.

MEMPHIS COTTON OIL COMPANY,
Memphis, Texas.

SIRS: Your claims for refund of $1,329.69 and $1,813.39 for the years 1922 and 1923, respectively, have been examined.

The basis of the claims is that your net income for 1922 should be $194,372.46 and for 1923, $30,123.71. No evidence has been filed with the claims to support your contentions. Article 1304 of Regulations states in part that:

"All facts relied upon in support of the claims should be clearly set forth in detail under oath."

Your attention is also directed to general counsel's Memorandum 1020, Cumulative Bulletin VI-1, page 119, Treasury Decision 4002, Cumulative Bulletin VI-1, page 121, and Treasury Decision 4211, Internal Revenue Bulletin, Volume VII, No. 39, page 9.

Since the information on file with the claims does not meet the requirements of article 1304 of Regulations 69, and the claims do not indicate that the taxes have been illegally assessed, they will be rejected. The rejection will officially appear in a schedule to be approved by the commissioner.

Respectfully,

C. B. ALLEN,
Deputy Commissioner.
By
Head of Division.

51 *Exhibit No. "7" to petition*

IT:AR:A-4-PAB APRIL 2ND, 1929.

COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

SIR:

In re: Memphis Cotton Oil Company, Memphis, Texas.

Referring to your letter of January 26th, 1929, wherein you proposed to reject the claims for refund of the above company for the years 1922 and 1923, for the alleged reason that the claims filed did not meet the requirements of article 1304 of Regulations 69, you are hereby advised that the taxpayer does not acquiesce in this decision, and a conference has been arranged in your office for April 9th, 1929, at two p. m.

Subsequent to the filing of said claims, a revenue agent audited the books of the taxpayer for the years 1922 and 1923, and by a report dated February 7th, 1928, found that the taxpayer was entitled to refunds of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively. Subsequently, on October 13th, 1928, the commissioner addressed a letter to the taxpayer finding overassessments of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively. On page 10 of the commissioner's said letter of October 13th, 1928, the following statement is made:

"Your claims for refund of $6,148.61, $1,329.69, and $1,813.39, for the years 1921, 1922, and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements.

52 While it would not appear to be necessary to amend the original claims filed for the years 1922 and 1923, after the commissioner had audited the books of the taxpayer and found the overassessments above referred to for said years, the taxpayer, however, does hereby amend its said claims for refund for 1922 and 1923, respectively, by specifically claiming the overassessments of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively, as outlined in the commissioner's said letter of October 13, 1928, a copy of which is attached hereto and made a part hereof.

Respectfully,

MEMPHIS COTTON OIL COMPANY,
By (Signed) WALTER E. BARTON,
Attorney for Taxpayer.

Encl.

Subscribed and sworn to before me, a notary public, this —— day of April, 1929.

[SEAL.]

———— ————,
Notary Public.

My commission expires ————.

I hereby certify that I prepared the foregoing amendment of the claims for refund for 1922 and 1923 of the Memphis Cotton Oil Com-

pany, of Memphis, Texas, and I know of my own knowledge that the facts stated therein are true.

(Signed) WALTER E. BARTON.

53 II. *General traverse*

Filed June 17, 1930

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

CHARLES B. RUGG,
Assistant Attorney General.

III. *Argument and submission of case*

On November 4, 1931, this case was argued and submitted on merits by Mr. Walter E. Barton for the plaintiff and by Mr. John A. Rees for the defendant.

54 IV. *Special findings of fact, conclusion of law, and opinion of the court by Littleton, J.*

Filed May 31, 1932

Mr. Walter E. Barton for the plaintiff.

Mr. R. C. Winters and Mr. Raymond C. Cushwa were on the brief.

Mr. John A. Rees, with whom was Mr. Assistant Attorney General Charles B. Rugg, for the defendant.

Plaintiff sues to recover $6,496.46, overpayments of income tax for 1922 and 1923 in the amounts of $1,660.70 and $4,835.76, respectively, with interest thereon from the dates on which payments were made. The overpayments are admitted. The Commissioner of Internal Revenue refused to refund the overpayments for the reason that, although the claims for refund were timely filed, the grounds thereof and the facts stated therein were insufficient in law to authorize him to allow and refund the overpayments. The only defense to this suit is that the claims for refund were insufficient to entitle the plaintiff to a refund, and, upon denial thereof, to maintain suit to recover the overpayments.

Special findings of fact

1. The plaintiff, a Texas corporation, duly made and filed its return for the calendar year 1922 showing a net income of $205,010.02 and a tax of $25,626.25, which was paid in four installments of $6,250, $6,563.12, $6,406.57, and $6,406.56 on March 11, June 14, September 13, and December 7, 1923, respectively.

The correct net income for 1922 was $182,515.43 and the correct tax payable thereon was $23,965.55. Plaintiff overpaid its income tax for 1922 in the amount of $1,660.70.

2. Plaintiff duly made and filed its return for the calendar year 1923 showing a net income of $44,631.08 and a tax of $5,578.89, which was paid in four installments of $1,393.94, $1,393.98, $1,395.48, and $1,395.49 on March 7, June 12, September 12, and December 6, 1924, respectively.

The correct net income for 1923 was $7,945.03 and the correct tax payable thereon was $743.13. Plaintiff overpaid its tax for 1923 in the amount of $4,835.76.

3. June 30, 1927, plaintiff filed a timely claim for refund, duly verified under oath of its president, for 1922 on the form prescribed by the Bureau of Internal Revenue, claiming a refund of
55 $1,329.69, or such greater amount as should be legally refundable. Plaintiff stated on the face of this claim for refund as follows:

"Deponent verily believes that this application should be allowed for the following reasons:

"The statement attached hereto shows—

1. That the amount of tax paid for this year was	$25,626.25
2. And that the correct amount of tax due was	24,296.56
3. And there was overpaid in error	1,329.69

4. Refund of which is requested and with interest as provided by law."

"The statement attached to this claim by the plaintiff stated as follows:

Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	34,535.75

Computation of tax

Net income	$194,372.46
12½ per cent	24,296.56
Previously paid	25,626.25
Overpaid	1,329.69

4. On the same day, to wit, June 30, 1927, plaintiff filed a timely claim for refund, duly verified under oath, for 1923 on the form prescribed by the Bureau of Internal Revenue claiming a refund of $1,813.39, or such greater amount as should be legally refundable.

Plaintiff stated on the face of this claim as follows:

"Deponent verily believes that this application should be allowed for the following reasons:

"The statement attached hereto shows:

1. The tax paid is	$5,578.85
2. The correct tax due, as	3,765.46
3. Tax overpaid in error	1,813.39

4. Refund of which is requested and with interest as provided by law."

5. "The statement prepared by plaintiff and attached to this claim for refund was as follows:

Net loss per books	$3,781.01
Taxable net income	30,123.71
Difference	33,904.72

Computation of tax

Net income	30,123.71
Tax 12½ per cent	3,765.46
Tax paid	5,578.85
Overpaid	1,813.39

6. Upon receipt of these claims for refund the Commissioner of Internal Revenue, in order to decide upon the merits thereof, made an investigation and an audit of the books and records of the plaintiff for 1922 and 1923 through an internal revenue agent in the office of the internal revenue agent in charge at Dallas, Texas, to
56 whom instructions were given by the commissioner to make such audit. The internal revenue agent examined and audited plaintiff's books and records and made a full detailed report of his findings to the Commissioner of Internal Revenue on February 7, 1928. A copy of this report was furnished to the plaintiff by the internal revenue agent in charge at Dallas, Texas, on April 12, 1928. The report showed the net income as disclosed by the books for each of the years and the correct statutory net income. It also showed the adjustments, the nature, and the amounts of the various items going to make up the difference, with a detailed explanation of each item.

The audit made by the internal revenue agent and the report prepared and filed by him with the commissioner February 7, 1928, showed that the correct taxable net income for 1922 was $182,515.43; that the correct amount of tax payable thereon was $23,965.55; and that the plaintiff had been overassessed in the amount of $1,660.70. The audit and report further showed that the correct taxable net income for 1923 was $7,945.03; that the correct tax payable thereon was $743.13; and that the plaintiff had been overassessed in the amount of $4,835.76.

6. Subsequent to the investigation and audit of plaintiff's books and records for 1922 and 1923 by the internal revenue agent, pursuant to instructions of the commissioner, C. B. Allen, Deputy Commissioner of Internal Revenue in charge of the Income Tax Unit of the Bureau of Internal Revenue, on August 9, 1928, advised the plaintiff by letter of that date that a review of the report submitted by the internal revenue agent in charge at Dallas, Texas, covering the years 1922 and 1923, disclosed overassessments of $1,660.70 for 1922 and $4,835.76 for 1923. This was in exact accordance with the report made by the revenue agent. This letter contained statements showing the details of the computation by which the overassessments were arrived at. The letter advised the plaintiff that if it should

not acquiesce in the adjustments proposed by the bureau, based upon recommendations of the internal revenue agent in his report, it should file its protest and argument with the internal revenue agent in charge at Dallas, Texas, within fifteen days. The letter further stated as follows:

"Your claims for refund of * * * $1,329.69 and $1,813.39 for the year * * * 1922 and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements. The overassessments shown herein will be made the subject of certificates of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 284 of the revenue act of 1926."

7. Upon the receipt of the aforementioned letter of August 9, 1928, from the Deputy Commissioner of Internal Revenue in charge of the Income Tax Unit, the plaintiff on September 7, 1928, protested against the amount of depreciation allowed in said letter for 1922. Thereafter on October 13, 1928, the Deputy Commissioner of Internal Revenue in charge of the Income Tax Unit of the bureau mailed to the plaintiff a letter in which he denied the protest with respect to depreciation for 1922 and sustained his previous findings, as outlined in his letter to the plaintiff of August 9, 1928. The letter of October 13, 1928, advised plaintiff that if it did not
57 acquiesce in the determination disclosed thereby and the adjustments made therein, it would be given a hearing in the Income Tax Unit at Washington, upon request, within fifteen days. Plaintiff made no protest against this determination and did not request a hearing thereon. This letter contained statements and schedules showing the details of the determination with respect to the tax for 1922 and 1923, disclosing the overassessments for each of the years in the amounts set forth in the revenue agent's report and in the first letter of the deputy commissioner of August 9, 1928. The letter of October 13, 1928, concluded with the same statements concerning the claims for refund and the overassessments for 1922 and 1923, as above quoted from the letter of August 9, 1928.

8. Nothing further was done with reference to the tax liability of plaintiff and the overassessments for 1922 and 1923, or with respect to its claims for refund for those years until January 26, 1929, when C. B. Allen, Deputy Commissioner of Internal Revenue in charge of the Income Tax Unit of the Bureau of Internal Revenue, prepared and mailed to the plaintiff a letter advising it that its claims for refund for 1922 and 1923 would be rejected. This letter was as follows:

"Your claims for refund of $1,329.69 and $1,813.39 for the years 1922 and 1923, respectively, have been examined.

"The basis of the claims is that your net income for 1922 should be $194,372.46 and for 1923, $30,123.71. No evidence has been filed with the claims to support your contentions. Article 1304 of Regulations states in part that:

"'All facts relied upon in support of the claims should be clearly set forth in detail under oath.'

"Your attention is also directed to general counsel's Memorandum 1020, Cumulative Bulletin VI–1, page 119, Treasury Decision 4002, Cumulative Bulletin VI–1, page 121, and Treasury Decision 4211, Internal Revenue Bulletin, Volume VII, No. 39, page 9.

"Since the information on file with the claims does not meet the requirements of article 1304 of Regulations 69, and the claims do not indicate that the taxes have been illegally assessed, they will be rejected. The rejection will officially appear in a schedule to be approved by the commissioner."

9. On April 2, 1929, the plaintiff by its attorney in fact wrote the following letter to the Commissioner of Internal Revenue, to which letter was attached a copy of the letter of the deputy commissioner of October 13, 1928:

"Referring to your letter of January 26th, 1929, wherein you proposed to reject the claims for refund of the above company for the years 1922 and 1923, for the alleged reason that the claims filed did not meet the requirements of article 1304 of Regulations 69, you are hereby advised that the taxpayer does not acquiesce in this decision, and a conference has been arranged in your office for April 9th, 1929, at two p. m.

"Subsequent to the filing of said claims, a revenue agent audited the books of the taxpayer for the years 1922 and 1923, and by a report dated February 7th, 1928, found that the taxpayer was entitled to refunds of $1,660.70 and $4,835.76 for the years 1922 and
1923, respectively. Subsequently, on October 13th, 1928, the
58 commissioner addressed a letter to the taxpayer finding over-
assessments of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively. On page 10 of the commissioner's said letter of October 13th, 1928, the following statement is made:

"'Your claims for refund of $6,148.61, $1,329.69, and $1,813.39, for the years 1921, 1922, and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements.'

"While it would not appear to be necessary to amend the original claims filed for the years 1922 and 1923, after the commissioner had audited the books of the taxpayer and found the overassessments above referred to for said years, the taxpayer, however, does hereby amend its said claims for refund for 1922 and 1923, respectively, by specifically claiming the overassessments of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively, as outlined in the commissioner's said letter of October 13, 1928, a copy of which is attached hereto and made a part hereof."

10. On October 23, 1929, the commissioner rejected plaintiff's claims for refund for 1922 and 1923 on the ground that they were not sufficient claims for refund under the statute and that allowance and refund of the overpayments for 1922 and 1923 were barred by

the statute of limitation. On the same date he notified the plaintiff of this rejection.

11. At all times herein mentioned C. B. Allen was the duly appointed, qualified, and acting deputy commissioner of internal revenue in charge of income taxes, with full power and authority to make the findings and decisions set forth in the letters of August 9, and October 13, 1928, and January 26, 1929, to the same extent and purpose as though made by the Commissioner of Internal Revenue personally.

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover $6,496.46, with interest as provided by law.

It is therefore adjudged and order that the plaintiff recover of and from the United States the sum of six thousand four hundred ninety-six dollars and forty-six cents ($6,496.46), with interest at 6 per cent per annum on $1,660.70 from December 7, 1923; on $650.81 from March 7, 1924; and $1,393.98 from June 12, 1924; $1,395.48 from September 12, 1924; and on $1,395.49 from December 6, 1924, to such date as the Commissioner of Internal Revenue may determine in accordance with the provisions of section 177 (b) of the Judicial Code, as amended by section 615 of the revenue act of 1928.

Opinion

LITTLETON, Judge, delivered the opinion of the court:

The question in this case is whether the Commissioner of Internal Revenue was justified in rejecting plaintiff's claims for refund for 1922 and 1923 on the ground that they were insufficient to constitute claims under the statute, and in refusing to schedule the over-
59 assessments and allow a refund of the overpayments for the years involved, and whether in view of such rejection the plaintiff is entitled to maintain this suit.

We are of opinion that the Commissioner of Internal Revenue had authority under the claims as filed and the facts before him to allow the overpayments and to refund the amounts thereof after the expiration of the period of limitation within which he could have made such allowance and refund without a claim, and that upon the facts as disclosed by the findings, the plaintiff is entitled to maintain this suit upon the commissioner's rejection of the claims.

The amount of the overpayment for each year is not in question.

The claims in question were timely filed. They were finally rejected by the commissioner on the sole ground that the plaintiff did not set forth in the claims at the time they were filed the specific ground upon which the overpayment was claimed and did not set forth the detailed facts upon which it relied to show that the correct

net income and correct tax for each of the years was less than the net income shown in the returns and the tax paid thereon. The claims for refund, as originally filed by the plaintiff, gave the commissioner jurisdiction over the matter of an overpayment for the years for which the claims were filed. Factors & Finance Co., Inc., v. United States, 56 Fed. (2d) 902. Lancaster Cotton Mills v. United States, No. J–596, decided this date. He had authority under the statute to allow and refund such overpayment as he might determine had been made on the basis of any facts before him at the time the claims were filed, or upon facts thereafter obtained by him from an examination of the plaintiff's books and records.

After the refund claims were filed and before he had made any decision thereon or taken any action with respect thereto, the commissioner directed an agent of his office to make an examination and audit of the plaintiff's books and records for the years for which the claims had been filed and to submit a report of such investigation and audit for the purpose of enabling him to determine and pass upon the merits of the claims. This investigation and audit were duly made and a detailed report thereof showing the correct net income, correct tax, and the amount of the overassessment with a statement of the various items and amounts causing the adjustments shown, with a detailed explanation of each item. The revenue agent made this report to the commissioner on February 7, 1928, and a copy of the same was thereafter furnished to the plaintiff. Upon receipt of the report the commissioner entered upon consideration of plaintiff's claims for refund and in the light of facts disclosed by the returns filed, the record in the case, and the facts and information disclosed in the revenue agent's report, made an audit of the plaintiff's tax liability for the years 1922 and 1923 and advised the plaintiff that upon review of the agent's reports and after consideration of the claims for refund he had determined overassessments of $1,660.70 for 1922 and $4,835.76 for 1923, which were the overassessments shown in the revenue agent's report. The commissioner therefore, prior to his consideration of the claims and before he had taken any action thereon, was fully informed as to the reasons for the overpayments and the detailed facts to support the same. He was fully advised, and, so far as concerned his jurisdiction and authority to act under the statute with respect to the claimed over-
60 payments, it made no difference whether the facts showing the overpayments were furnished in the first instance by the plaintiff as a part of its claims for refund or were already in the possession of the commissioner, or were obtained by him after the filing of the claims by an examination and audit of the plaintiff's books of accounts. Factors & Finance Co., Inc., v. United States, supra.

The plaintiff might have amended the claims before the commissioner had acted thereon so as to state the facts relied upon, but the facts obtained by the commissioner before he had acted rendered

amendment unnecessary and fulfilled the requirement of the regulations that all facts relied upon should be set forth by the taxpayer. Although we think it is unimportant whether the commissioner obtained the facts before or after the expiration of the period within which he could have allowed an overpayment without a claim, it appears in this case that so far as 1923 is concerned the grounds of the claim and all the facts necessary to a decision whether there had been an overpayment for the year were furnished to the commissioner on February 7, 1928, before the expiration of time within which an original claim for refund could have been filed for 1923.

The facts considered by the commissioner, and upon which he concluded that there had been overassessments in the amounts involved in this suit for the years 1922 and 1923, were supplied by the plaintiff to the commissioner through his agent and at his direction. The commissioner, therefore, was not justified in rejecting the claims and in refusing to allow the overpayments disclosed by the facts furnished him on the ground that the claims were insufficient. Nor can we agree with the defendant that the plaintiff may not maintain this suit to recover the admitted overpayments because the facts before the commissioner at the time he acted were not originally set forth by the plaintiff in the claims which it filed. We think the claims, considered in the light of the facts before the commissioner as disclosed by the record, were sufficient to entitle the plaintiff to sue upon the rejection thereof. The commissioner was not misled. He had before him all the facts that the taxpayer could furnish and he had every opportunity to correct any errors that had been made in the assessment and collection of the tax for the years involved. The rule that the taxpayer may not bring suit unless the commissioner has been informed of the matters made the basis of the suit and has been afforded an opportunity to consider the same does not, therefore, apply in this case.

Judgment will be entered in favor of plaintiff for $6,496.46 with interest as provided by law. It is so ordered.

WHALEY, Judge; WILLIAMS, Judge; GREEN, Judge; and BOOTH, Chief Justice, concur.

61 **V. *Judgment***

At a Court of Claims held in the city of Washington on the 31st day of May, A. D., 1932, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of six thousand four hundred ninety-six dollars and forty-six cents ($6,496.46), with interest at six per cent per annum on $1,660.70 from December 7, 1923; on

$650.81 from March 7, 1924; and $1,393.98 from June 12, 1924; $1,395.48 from September 12, 1924; and on $1,395.49 from December 6, 1924, to such date as the Commissioner of Internal Revenue may determine in accordance with the provisions of section 177 (b) of the Judicial Code, as amended by section 615 of the revenue act of 1928.

62 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1932

Supreme Court of the United States

Order allowing certiorari

Filed October 17, 1932

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is assigned for argument immediately following the argument of case No. 234, United States of America vs. Henry Prentiss & Co., Inc.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1932

Office Supreme Court
NOV 23
CHARLES ELMORE

FILE COPY

No. 308

In the Supreme Court of the United States

OCTOBER TERM, 1932

THE UNITED STATES, PETITIONER
v.
MEMPHIS COTTON OIL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 308

THE UNITED STATES, PETITIONER

v.

MEMPHIS COTTON OIL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 38) is reported in 59 F. (2d) 276.

JURISDICTION

The judgment of the court below was entered May 31, 1932. (R. 40–41.) Petition for a writ of certiorari was filed August 19, 1932, and the writ was granted October 17, 1932. (R. 43.) The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether the respondent may maintain a suit for the refund of 1922 and 1923 taxes, where the only claims for refund filed contained no statement of the grounds relied upon, but the Commissioner learned facts through a report of a revenue agent which if presented in the claims would have been an adequate basis for allowing a refund.

STATUTES AND REGULATIONS INVOLVED

The applicable provisions of the statutes and regulations involved are set forth in the Appendix (*infra*, p. 8).

STATEMENT

Respondent sued in the Court of Claims to recover overpayments of income taxes for the years 1922 and 1923. The following is a summary of the findings of facts made by that court (R. 33–38):

The respondent paid the last installment of its 1922 income taxes on December 7, 1923, and the last installment of its 1923 income taxes on December 6, 1924, the taxes for each year being overpaid. A claim for a refund for 1922 was filed on June 30, 1927, specifying no particular grounds but stating as follows:

> Deponent verily believes that this application should be allowed for the following reasons:
>
> The statement attached hereto shows—
>
> 1. That the amount of tax paid for this year was.. $25,626.25
> 2. And that the correct amount of tax due was... 24,296.56
> 3. And there was overpaid in error..... 1,329.69
> 4. Refund of which is requested and with interest as provided by law.

The statement attached to this claim by the plaintiff stated as follows:

Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	34,535.75

Computation of tax

Net income	$194,372.46
12½ per cent	24,296.56
Previously paid	25,626.25
Overpaid	1,329.69

On the same day a claim for a refund of the 1923 taxes was filed by the respondent in similar form, likewise stating no specific grounds upon which the claim was based. No further claims were ever filed by the respondent. (R. 33–35.)

The matter was referred by the Commissioner of Internal Revenue to a revenue agent in the respondent's district with directions to examine the respondent's books and make a detailed report to the Commissioner. This report was received by the Commissioner on February 7, 1928, before the expiration of the time for filing claims for a refund of the 1923 taxes, but after the expiration of the time within which a claim might have been filed for a refund of 1922 taxes. This report showed that the respondent had been overassessed. The Deputy Commissioner on August 9, 1928, before the expiration of the period for filing a claim for refund of 1923 taxes (R. 23), wrote the respondent that a certificate of overassessment would issue in due course. Later, after further examination, the Deputy Commissioner wrote the respondent that because no evidence had been filed to support the general claims presented by the respondent, the claims would be rejected. On October 23, 1929, the respondent's claims for refund of 1922 and 1923 taxes were rejected on the ground that they were not sufficient under the statute, and that an allowance and refund of the overpayments for 1922 and 1923 were barred by the statute of limitations. (R. 35–38.)

The Court of Claims gave judgment for the respondent. (R. 40–41.)

SPECIFICATION OF ERRORS TO BE URGED

1. The Court of Claims erred in holding that a timely claim for refund specifying no grounds may support a suit for refund of taxes because the Commissioner, through a revenue agent, learned that an overpayment had been made by the respondent.

2. The Court of Claims erred in giving judgment for the respondent.

ARGUMENT

Under this Court's decision in *United States* v. *Felt & Tarrant Manufacturing Co.*, 283 U. S. 269, a document filed with the Commissioner of Internal Revenue requesting a refund of an alleged overpayment of taxes, but not stating the specific facts relied upon in asserting the claim, is not *a claim for refund* within the meaning of the Revenue Acts and applicable provisions of the Revised Statutes. Consequently, the filing of such a paper will not serve as the basis of a suit to recover the amount of an overpayment of taxes. In the instant case two such documents were filed by the respondent. Each was filed within the period allowed for filing claims for refunds, but neither stated any specific facts that were relied upon as grounds for refund. No attempt was made to amend either claim, and each was expressly rejected by the Commissioner because of its noncompliance with the statutory requirements. (R. 37.)

The Court of Claims held that this suit, instituted within two years from the time of the disallowance of these blanket claims, could be maintained because it appeared that the Commissioner, through his independent investigation, had learned of specific facts on which a refund could be granted to the respondent. This action of the court below was incorrect. The Commissioner's knowledge or ignorance is not material. Under Section 3226 of the Revised Statutes, as amended (*infra,* p. 9), such suit can not be maintained until a claim for refund has been duly filed in accordance with the Treasury Regulations. Such a claim was not filed before May 8, 1930, when this suit was commenced.

Under Section 284 (a) and (b) (1) of the Revenue Act of 1926 (*infra,* p. 8), the Commissioner had authority to make a refund within four years from the time of payment of the 1922 and 1923 taxes. He did not do so, and the respondent neglected to pursue its statutory remedy by filing valid claims for refund. As to the 1922 taxes, this four-year period expired on December 7, 1927, two months before the Commissioner received the agent's report indicating that there had been an overassessment. The opinion of the court below states that the general claims "gave the commissioner jurisdiction over the matter of an overpayment," and that the respondent "might have amended the claims." We submit that the Commissioner's authority to make refunds was not extended by these blanket claims, and that, as

argued by the Government in No. 141, *The United States* v. *Factors & Finance Company,* any amendment to these general claims designed to convert them into specific claims would not date back to the date of the original claim. But in any event no amendment was attempted by the taxpayer. The reasons for insistence on proper claims for refund are stated in our brief in that case. The statute makes no distinction between a case where the Commissioner learns of the overpayment from the taxpayer and one in which he learns of it from a subordinate. Orderly administration demands that the statute be complied with as fully in one case as the other or there will be no end to the complexities with which application of the simple rule of the statute may be surrounded. In the absence of some exception therein strict compliance is its mandate.

The Court of Claims in two recent decisions—*Electric Power & Light Corporation* v. *United States* and *Johnson* v. *United States,* both decided November 14, 1932, and printed in the Appendix, pp. 23-30, to the Government's brief in *Factors and Finance Company* v. *United States,* No. 141, current terms—qualified the scope of the opinion in the instant case. It limited the application of the rule to cases in which the Commissioner was advised for the first time of the facts disclosing an overpayment by an investigation undertaken by the Bureau of Internal Revenue but prompted by a claim for refund. But even thus restricted, the opinion

ignores the mandate of the statute and is in conflict with the decision of this Court in *United States* v. *Felt and Tarrant Mfg. Co., supra.*

There was no waiver of compliance by the Commissioner in this case. No certificate of overassessment was issued. Under these circumstances there is no basis in the statute for relief from a situation which the taxpayer could have avoided by following its requirements.

CONCLUSION

The decision of the court below is erroneous and should be reversed and judgment should be entered for the United States.

Respectfully submitted.

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Solicitor General.
CHARLES B. RUGG,
Assistant Attorney General.
WHITNEY NORTH SEYMOUR,
Special Assistant to the Attorney General.
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Attorneys.

NOVEMBER, 1932.

APPENDIX

Sections 284 (a), (b) (1), and 1113 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 66, 116, provide:

> SEC. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.
>
> (b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—
>
> (1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this Act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior Act, unless before the expiration of such period a claim therefor is filed by the taxpayer; * * *
>
> (U. S. C. App., Title 26, Sec. 1065.)

SEC. 1113. (a) Section 3226 of the Revised Statutes, as amended, is reenacted without change, as follows:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

U. S. GOVERNMENT PRINTING OFFICE: 1932

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 308

THE UNITED STATES, *Petitioner,*

v.

MEMPHIS COTTON OIL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE RESPONDENT

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HAYWORTH PRINTING COMPANY . WASHINGTON D C

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 308

THE UNITED STATES, *Petitioner*,

v.

MEMPHIS COTTON OIL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Court of Claims (R. 38) is reported in 59 F. (2d) 276.

JURISDICTION

The judgment of the court below was entered May 31, 1932. (R. 33.) Petition for a writ of certiorari was filed August 19, 1932, and the writ was granted October 17, 1932. (R. 41.) The juris-

diction of this Court rests upon Section 3 (b) of the Act of February 13, 1925.

Question Presented

There are two questions presented:

I.

Whether the respondent may maintain this suit for refund of 1922 and 1923 income taxes on claims for refund filed on official Form 843, which claims set forth without detailed evidence the amount of net income for one year and the amount of net loss for the other year, per respondent's books; where the respondent, after filing said claims, furnished such detailed evidence to the Commissioner of Internal Revenue through his internal revenue agent, whom the Commissioner had instructed to audit the respondent's books and records for the years 1922 and 1923, *in order that the Commissioner might decide upon the merits of said claims for refund;* where the Commissioner considered such detailed evidence in connection with the respondent's said claims for refund and found that the respondent's income taxes for the years 1922 and 1923 were overpaid in the amounts for which this suit is brought, and where the Commissioner subsequently refused to allow said claims for refund for the sole alleged reason that no evidence was filed with said claims to support the same.

II.

If the original claims for refund filed on official Form 843, together with the detailed evidence to

support the same, which the respondent furnished to the Commissioner of Internal Revenue under the circumstances set forth in I, *supra*, are inadequate to form the basis of this suit, whether such original claims for refund on Form 843 could be amended before the rejection thereof, and after the expiration of the statute of limitations for the filing of new claims for refund for said years 1922 and 1923.

Statutes and Regulations Involved

The applicable provisions of the statutes and regulations involved are set forth in the Appendix. (Infra, p. 36.)

STATEMENT

The respondent sued in the Court of Claims to recover overpayment of income taxes for the years 1922 and 1923, and that court gave judgment for respondent. (R. 40.) The following is a summary of the findings of fact made by that court. (R. 33-38.)

The respondent duly made and filed its income tax returns for 1922 and 1923 and duly paid its taxes for said year, paying installments as follows: *for 1922,* $6,250, $6,563.12, $6,406.57, and $6,406.56, on March 11, June 14, September 13, and December 7, 1923, respectively; *for 1923,* $1,393.94, $1,393.98, $1,395.48, and $1,395.49, on March 7, June 12, September 12, and December 6, 1924, respectively. The respondent's income taxes were overpaid $1,660.70 for 1922 and $4,835.76 for 1923. (R. 33, 34.)

On June 30, 1927, respondent filed a timely claim for refund for 1922 under oath on Form 843, prescribed by the Bureau of Internal Revenue, claiming a refund of $1,329.69, or such greater amount as should be legally refundable. In addition to the formal information required, said claim contained the following statement:

"Deponent verily believes that this application should be allowed for the following reasons:

The statement attached hereto shows—

1. That the amount of tax paid for this year was	$25,626.25
2. And that the correct amount of tax due was	24,296.56
3. And there was overpaid in error	$1,329.69
4. Refund of which is requested and with interest as provided by law	
Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	$34,535.75

Viz.: Income taxes, $34,535.75

COMPUTATION OF TAX

Net income	$194,372.46
12½ per cent	24,296.56
Previously paid	25,626.25
Overpaid	$1,329.69"

(R. 15, 16, 34.)

On June 30, 1927, respondent filed a timely claim for refund under oath for 1923 on Form 843, prescribed by the Bureau of Internal Revenue, claiming a refund of $1,813.39, or such greater amount as should be legally refundable. In addition to the formal information required, said claim contained the following statement:

"Deponent verily believes that this application should be allowed for the following reasons:

The statement attached hereto shows:

1. The tax paid is	$5,578.85
2. The correct tax due, as	3,765.46

3. Tax overpaid in error	$1,813.39
4. Refund of which is requested and with interest as provided by law.	
Net loss per books	$3,781.01
Taxable net income	30,123.71
Difference	$33,904.72

Viz.: Income taxes, $33,904.72

COMPUTATION OF TAX

Net income	$30,123.71
Tax 12½ per cent	3,765.46
Tax paid	5,578.85
Overpaid	$1,813.39"

(R. 17, 18, 34, 35.)

Upon receipt of these claims for refund, the Commissioner of Internal Revenue, *in order to decide upon the merits thereof,* instructed an internal revenue agent to investigate and audit the respondent's books and records; the respondent furnished the necessary evidence to said internal revenue agent, who made a full and detailed report to the Commissioner of Internal Revenue on February 7, 1928, a copy of which was furnished to the respondent on April 12, 1928. Said report showed the net income as disclosed by the respondent's books, the correct statutory net income for each of said years, with the adjustments, nature, and the amounts of the various items going to make up the difference, with a detailed explanation of each item. It also showed that the respondent was overassessed $1,660.70 for 1922 and $4,835.76 for 1923. (R. 19-23, 35.)

Subsequent to the investigation and audit of the respondent's books and records by the revenue agent pursuant to the instructions of the Commissioner, to wit, on August 9, 1928, the Deputy Com-

missioner of Internal Revenue in charge of the Income Tax Unit, advised the respondent by letter that the revenue agent's report had been reviewed and that respondent was overassessed in the amounts of $1,660.70 for 1922, and $4,835.76 for 1923. The Deputy Commissioner incorporated into his letter of August 9, 1928, the details which were contained in the revenue agent's report of February 7, 1928; and the Deputy Commissioner's said letter contained the following statement:

> "Your claims for refund of $6,148.61, $1,329.68, and $1,813.39 for the years 1921, 1922, and 1923, respectively, *have been given careful consideration and adjusted in accordance with the above statements.*" (Italics ours.) (R. 23-27, 35, 36.)

On September 7, 1928, the respondent protested the amount of depreciation allowed by said Deputy Commissioner in his letter of August 9, 1928; and on October 13, 1928, said Deputy Commissioner mailed a letter to the respondent in which he denied the respondent's protest with respect to depreciation. Said Deputy Commissioner's letter of October 13, 1928, contained statements and schedules showing the details of determination with respect to the taxes for 1922 and 1923, disclosed the same overassessments for each of said years that were set forth in the revenue agent's report and said Deputy Commissioner's letter of August 9, 1928. The respondent was again advised that its claims for refund had been carefully considered and adjusted in accordance with the statement made in said letter of October 13, 1928. (R. 27-31, 36.)

Thereafter on January 26, 1929, said Deputy Commissioner advised the respondent that its claims for refund would be rejected inasmuch as no evidence had been filed with the claims to support respondent's contentions. (R. 31, 36, 37.)

The Deputy Commissioner referred to herein acted with the same power and authority in making the findings and decisions set forth in his letters of August 9, 1928, October 13, 1928, and January 26, 1929, as the Commissioner of Internal Revenue had personally to make such findings and decisions. (R. 38.)

On April 2, 1929, the respondent, by its attorney, addressed a letter to the Commissioner of Internal Revenue amending respondent's claims for refund for 1922 and 1923, by specifically claiming the overassessments of $1,660.70 for 1922, and $4,835.76 for 1923, and attaching to said amendment, which was made a part thereof, a copy of said Deputy Commissioner's said letter of October 13, 1928, which counsel for petitioner on page 1 of his brief admits would have been adequate for the allowance of the claims for refund, if the same information had been presented with said claims when filed. (R. 32.)

On October 23, 1929, the respondent's said claims for refund for 1922 and 1923 were rejected by the Commissioner.

SUMMARY OF ARGUMENT

The respondent's claims for refund on Form 843, setting forth net income per books for one year and net loss per books for the other, together with the detailed evidence in support thereof, which the respondent furnished to the Commissioner at the latter's request, *in order for the Commissioner to decide upon the merits of said claims,* are adequate to form the basis of this suit. The Commissioner considered said evidence in connection with said claims and found that the respondent's taxes were overpaid in the amounts for which this suit is brought.

The petitioner admits that the claims would have been sufficient if the evidence presented to the Commissioner after the filing of the claims had been submitted *in the claims themselves.* Neither the statute nor the regulations require that this be done. All that is necessary is that the taxpayer support its claim by sufficient evidence in order that the Commissioner may pass upon the issues involved before suit is brought. Not only was this done here, but the Commissioner actually considered the evidence and held that it was sufficient to support the claims. Having all of the facts before him, and not being mislead in any respect whatsoever, the Commissioner should not be sustained on the mere technicality that the evidence was not presented in the claims themselves.

If the claims on Form 843 as filed, together with the evidence presented by the respondent to the Commissioner in support thereof, are not sufficient

upon which to base this suit, the amendment of the respondent's claims made on April 2, 1929, perfected any defect that may have existed prior to such amendment. This amendment was made after the expiration of the statute of limitations for filing claims, but before the rejection of respondent's claims on Form 843.

ARGUMENT

I.

Respondent's Original Claims for Refund on Form 843, Together with the Detailed Evidence in Support Thereof, Which the Commissioner of Internal Revenue Requested in Order to Decide Upon the Merits of Said Claims, and Which the Respondent Furnished to the Commissioner Pursuant to Such Request, Are Sufficient to Form the Basis of Respondent's Suit to Recover the Admitted Overpayments.

It is admitted by the respondent that its claims for refund on Form 843, were insufficient *per se,* without the filing of additional evidence in support thereof; and it is conceded by the petitioner that the respondent furnished evidence to the Commissioner prior to the rejection of said claims, which would have been sufficient to allow them, if such evidence had been presented in the claims themselves. (Petitioner's brief, p. 1.)

The Commissioner upon receipt of these claims sent a revenue agent to respondent's place of business to audit its books and records *"in order to*

decide upon the merits thereof." (R. 35.) The respondent opened its books and records to the revenue agent for the purpose of giving the Commissioner the detailed evidence requested in order to pass upon its claims for refund, and said revenue agent made a report to the Commissioner on February 7, 1928. The Commissioner considered the claims and found that the information furnished by the respondent supported the same, which is evidenced by the Commissioner's letters to the respondent under date of August 9, 1928, and October 13, 1928. These letters set forth all of the details of respondent's income and deductions necessary to pass upon the claims, and further stated that the respondent's claims for refund "have been given careful consideration," and that its income taxes were overassessed in the amounts for which this suit is brought. (R. 23-31.) This is the basis for petitioner's admission that the information furnished by the respondent to the Commissioner "if presented in the claims would have been an adequate basis for allowing a refund." (Petitioner's brief, p. 1.)

The gravamen of petitioner's argument is that the respondent's claims for refund are insufficient to support a suit in court, because the respondent did not present *in its claims for refund* the identical evidence which the Commissioner requested "in order to pass upon the merits thereof," and which the respondent furnished to the Commissioner for that purpose.

This reduces the issue to its simplest terms; and, this Court is called upon to decide whether a tax-

payer is precluded from suing in court for an admitted overpayment of income taxes, solely because the taxpayer failed to present in its claims at the time of filing the necessary evidence to support the same, when as a matter of fact such evidence was submitted to the Commissioner at his request, prior to final action on said claims, and considered by the Commissioner and found by him to be adequate for the purpose of allowing the same.

Whether respondent may maintain this suit depends upon the proper construction of Sec. 284 (a) and (b) of the Revenue Act of 1926, and Sec. 3226, R. S., which are set out in full in the Appendix. (P. 36, *infra.*) For the convenience of the Court, we print excerpts thereof as follows:

> Sec. 284 (a). Where there has been an overpayment of any income, war-profits or excess-profits tax imposed by this Act * * * the Revenue Act of 1921 * * * or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits or excess-profits tax or installment thereof then due from the taxpayer and any balance of such excess shall be refunded immediately to the taxpayer.
>
> Sec. 284 (b). Except as provided in subdivisions (c), (d), (e) and (g) of this section—
>
> (1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this Act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior Act, unless before the expiration of such period a claim is filed therefor by the taxpayer;

> Sec. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof. * * *

Sec. 284 (a) requires the Commissioner to refund or credit, as the case may be, any overpayment of income taxes made by a taxpayer; and Sec. 284 (b) provides that the Commissioner shall not make such refund or credit after four years from the time the tax was paid for 1922 and 1923, unless a claim therefor was filed by the taxpayer prior to the expiration of such period.[1]

The purport of Sec. 284 (a) and (b), therefore, is to make it mandatory upon the Commissioner to refund or credit, in the event of an overpayment, irrespective of whether a claim for refund is filed, except the Commissioner is denied the power to make such refund or credit after four years from the time the tax was paid, unless within such period a claim for refund was filed.

On the other hand, Sec. 3226, R. S., is mandatory that no suit for the recovery of any internal rev-

[1] There are other exceptions in Sec. 284 (c), (d), (e), and (g) of the Revenue Act of 1926, which, however, do not apply to the instant case.

enue tax shall be maintained unless a claim for refund has been filed with the Commissioner of Internal Revenue, irrespective of when such suit is instituted.[2]

The evident purpose of Sec. 3226, R. S., is to require taxpayers first to present their claims to the Commissioner of Internal Revenue before bringing an action in court, in order to give him an opportunity to pass upon the merits thereof. It is founded upon principles of public policy that litigation should be discouraged, and that the courts should not be called upon to decide questions which, if presented to the proper administrative officers, might be settled without resort to litigation.

This principle has been enunciated by the courts in a number of cases. In *Paul Jones & Co. v. Lucas,* 33 F. (2d) 907, the Court said:

> "The evident purpose of Sec. 3226, R. S., is to afford to the Commissioner of Internal Revenue an opportunity to correct any errors made in the assessment or collection of taxes before the taxpayer and the government, or its representatives are put to the expense and trouble of litigation."

To the same effect see *Feather River Lumber Co. v. U. S.,* 66 Ct. Cl. 64; *Tucker v. Alexander,* 15 F. (2d) 356; *Union & N. H. Tr. Co. v. Eaton,* 20 F. (2d) 419; *Warner v. Walsh,* 24 F. (2d) 449; *Union Tr. Co. v. McCaughn,* 24 F. (2d) 459; *Wunderle v. McCaughn,* 38 F. (2d) 258.

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[2] There are other provisions of Sec. 3226, R. S., limiting the time within which suit may be filed, even though a claim for refund was duly filed, but these provisions are not pertinent here.

In the instant case the Forms 843, together with the detailed evidence which the respondent submitted in support thereof to the Commissioner of Internal Revenue, through his internal revenue agent, in order for the Commissioner to pass upon the merits of said claims, not only were in sufficient detail to acquaint the Commissioner with the issues involved, but the Commissioner actually considered such evidence in connection with said claims and advised respondent that on the basis of such evidence its taxes for 1922 and 1923 were overstated in the amounts for which this suit is brought.

The claims on Form 843 and the evidence in support thereof, which the respondent submitted to the Commissioner of Internal Revenue, clearly satisfy Sec. 3226, R. S., in so far as the purpose of that section is concerned, in requiring the taxpayer to submit his contentions to the Commissioner of Internal Revenue as a condition precedent to suit.

Art. 1036 of Reg. 62, promulgated under the Revenue Act of 1921, is relied upon by petitioner in support of his argument that respondent's claims for refund are inadequate upon which to base this suit.[3] This article is quoted in full in the Appendix (P. 36, *infra*); but we quote below the portion thereof upon which the petitioner relies.

> "Art. 1036. *Claims for refund of taxes erroneously collected.*—Claims by the taxpayer

[3] This regulation is not referred to specifically in petitioner's brief herein, but petitioner refers to its brief in *U. S. v. Factors & Finance Co.*, No. 141, wherein this regulation is relied upon. Furthermore, the Commissioner rejected respondent's claims for refund for alleged noncompliance with this regulation. (Petitioner's brief, p. 6; R. 31.)

for the refunding of taxes and penalties erroneously or illegally collected shall be made on Form 843. In this case the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. * * *"

The foregoing regulation was promulgated on Feb. 15, 1922. It is substantially the same as corresponding regulations promulgated under the Revenue Acts of 1918, 1924, 1926 and 1928, which are printed in the margin.[4] None of these regulations, including Art. 1036 of Reg. 62, *supra*, specifically provided that the evidence relied upon

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[4] *Art. 1036, Reg. 45*, promulgated April 16, 1919, and repromulgated January 28, 1921, under the authority of the Revenue Act of 1918, provided:

"Claims by the taxpayer for the refunding of taxes and penalties erroneously or illegally collected shall be made on form 46 (revised). In this case, as in that of claims for abatement, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. * * *"

Art. 1036, Reg. 65, promulgated October 6, 1924, under the authority of the Revenue Act of 1924, provided:

"Claims by the taxpayer for the refunding of taxes, interest, penalties and additions to tax erroneously or illegally collected shall be made on Form 843. All facts relied upon in support of the claim should be clearly set forth under oath. * * *"

Art. 1304, Reg. 69, promulgated August 28, 1926, under the authority of the Revenue Act of 1926, provided:

"Claims by the taxpayer for the refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall be made on Form 843. All facts relied upon in support of the claim should be clearly set forth in detail under oath. * * *"

Art. 1254, Reg. 74, promulgated February 15, 1929, under the authority of the Revenue Act of 1928, provided:

"Claims by the taxpayer for the refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall be made on Form 843. A separate claim on such form shall be made for each taxable year or period. All facts relied upon in support of the claims should be clearly set forth in detail under oath. * * *"

should be presented in the claim for refund itself, as the petitioner now contends, and the inference is that such requirement was not intended. This construction of the Commissioner's regulations over the ten-year period from 1919 to 1929 is supported by the fact that on March 27, 1929, the Commissioner promulgated T. D. 4265, *to take effect on May 1, 1929,* which we have printed in full in the Appendix. (P. 36, *infra.*) This T. D. provides that "a claim for refund * * * should be made on * * * Form 843, * * * although a claim will not be considered defective solely by reason of the fact that it is not made" on that form. With respect to the grounds for the claim and the facts in support thereof, however, the T. D. is mandatory. It provides—

> "The claim *must set forth* in detail under oath each ground upon which a refund or credit is claimed and the facts sufficient to apprise the Commissioner of the exact basis thereof. A claim which does not comply with the requirements of the preceding sentence will not be considered for any purpose as a claim for refund or credit.
>
> "No refund or credit will be allowed after the expiration of the statutory period of limitations applicable to the filing of a claim therefor except upon one or more of the grounds so set forth in a claim, or an amendment thereof, filed prior to the expiration of such period.
>
> "These regulations *shall take effect on May 1, 1929,* and shall be applicable to all claims filed *on or after such date,* and all other regulations are modified in so far as they are inconsistent with these regulations." (Italics ours.)

If Art. 1036 of Reg. 62 made it mandatory on the taxpayer to present in the claim all of the facts in support thereof, as the petitioner now contends, what was the necessity of promulgating T. D. 4265? This T. D. specifically provides that which the petitioner now contends was required by Art. 1036, *supra.* A change in language of an Act evidences a change in the intent of the Legislature, and this applies equally to regulations. (*Johnson v. U. S.,* 225 U. S. 405, 415, 416; *Bugajewitz v. Adams,* 228 U. S. 585, 591.)

That a new requirement with respect to claims for refund was intended is further evidenced by the last paragraph of T. D. 4265, *supra,* to the effect *that it should not take effect until May 1, 1929,* more than thirty days after its promulgation, and that it should apply to all claims *filed on or after such date.* The evident purpose of delaying the effective date was to permit taxpayers to become acquainted with the changed requirements; and the plain purpose of excluding claims for refund filed before May 1, 1929, was to give it only a *prospective* application.

In view of the foregoing, we respectfully submit that Art. 1036, Reg. 62, does not require the evidence in support of a claim for refund to be presented in the claim itself. If the regulation, however, is susceptible of the construction contended for by the petitioner, it is unreasonable in so far as it applies to the instant case, in that it imposes an unnecessary and useless requirement upon the respondent. The reference in the claims to the petitioner's net income and net loss per books for

the respective years, together with the respondent's furnishing the necessary evidence to the Commissioner in support thereof *in order that the Commissioner might decide upon the merits of said claims* was in effect equivalent to presenting such evidence in the claims themselves. The Commissioner was not misled by the claims for refund as filed; he audited the respondent's books *in order to pass upon the respondent's said claims for refund;* the respondent furnished the evidence for the purpose required by the Commissioner; the latter considered the evidence submitted in support thereof and actually determined overassessments in the exact amounts for which this suit is brought. Clearly the Commissioner would have been in no better position to pass upon the merits of respondent's claims, if the evidence in support thereof had been presented in the claims themselves than he actually was under the circumstances of this case, where the identical evidence was furnished to him subsequent to the filing of said claims, *in order that he might decide upon the merits thereof.* To permit the Commissioner to reject the respondent's claims for refund under such circumstances would be to sustain the petitioner on the most flagrant technicality. It would be subversive of instead of conformable to the manifest intent of the statute. (*Lex nil frustra jubet.*)

The language of this Court in *Tucker v. Alexander,* 275 U. S. 228, is applicable here:

> "The statute and the regulations must be read in the light of their purpose. They are devised, not as traps for the unwary, but for convenience of government officials in passing

upon claims for refund and in preparing for trial. Failure to observe them does not necessarily preclude recovery."

The petitioner relies principally upon the decision of this Court in *U. S. v. Felt & Tarrant Mfg. Co.*, 283 U. S. 269, to support its contention that respondent's claims are inadequate upon which to base this suit. In that case the taxpayer filed a general claim for refund stating that it had filed with the Commissioner a claim for special relief under Sec. 210 of the Revenue Act of 1917, and the claim also contained a statement that it was filed "to protect all possible legal rights of the taxpayer, pending, and at the rate of, the settlement of the claim for relief." The claim also requested an oral hearing and the right of appeal in the event of an adverse decision on the part of the Unit and before any rejection of the claim was made. Thereafter the taxpayer filed a brief and made an oral argument in the office of the Commissioner with respect *solely* to the claim for relief under Sec. 210.

The taxpayer's claim for refund based on special relief was allowed in part. Thereafter suit was brought in the Court of Claims for a refund based upon alleged *exhaustion or obsolescence of the taxpayer's patents,* which issue had not been raised in the taxpayer's claim for refund, in its brief, or at the oral hearing on special relief.

Under these circumstances this Court held that the taxpayer could not maintain the suit. We quote from the opinion as follows:

"The filing of a claim or demand as a prerequisite to a suit to recover taxes paid is a

familiar provision of the revenue laws, compliance with which may be insisted upon by the defendant, whether the collector or the United States. * * *

"One object of such requirements is to advise the appropriate officials of the demands or claims intended to be asserted, so as to insure an orderly administration of the revenue (*Nichols v. United States, supra,* 7 Wall. 130, 19 L. ed. 128), a purpose not accomplished with respect to the present demand by the bare declaration in respondent's claim that it was filed 'to protect all possible legal rights of the taxpayer.' The claim for refund, which Sec. 1318 makes prerequisite to suit, obviously relates to the claim which may be asserted by the suit. Hence, quite apart from the provisions of the regulation, the statute is not satisfied by the filing of a paper which gives no notice of the amount or nature of the claim for which the suit is brought, and refers to no facts upon which it may be founded."

Clearly this decision is not authority for the proposition advanced by the petitioner that respondent may not maintain this suit. In the *Felt & Tarrant* case, the right to sue was denied because the taxpayer had not presented to the Commissioner the issue upon which the suit was based. In the instant case, the respondent not only presented to the Commissioner the necessary evidence in support of its claims for refund *in order for the Commissioner to decide upon the merits thereof;* but the Commissioner considered such evidence in connection with such claims and actually found from such evidence that the respondent overpaid

its taxes for 1922 and 1923 in the exact amounts for which this suit is brought. Instead of supporting the contention of the petitioner, that case sustains the right of the respondent to maintain this suit.

In *Bonwit Teller & Co. v. U. S.*, 283 U. S. 258, the facts were as follows:

The Commissioner made a jeopardy assessment; the taxpayer filed a claim in abatement; subsequently on November 19, 1924, the Commissioner mailed the taxpayer a letter disclosing an overassessment of $10,866.43 in excess of the jeopardy assessment, such excess amount representing a part of the original tax paid on December 3, 1919. The Commissioner advised the taxpayer that the overpayment of $10,866.43 could not be refunded because a refund claim was not filed within the statutory period.

Subsequently Congress amended the law extending the time for filing claims for refund for 1919 provided a waiver were filed on or before June 15, 1925. Thereupon the Commissioner wrote the taxpayer advising it to file a waiver, which was done on May 22, 1925, and forwarded to the Commissioner in a letter stating "In accordance with your request we enclose you herewith waiver." This waiver was received and accepted by the Commissioner on May 23, 1925.

The Commissioner decided that the taxpayer's letter of May 22, 1925, enclosing the waiver should be treated as an informal claim for refund filed May 23, 1925.

On December 11, 1926, the taxpayer wrote the Commissioner a letter calling attention to previous

correspondence and informing the Commissioner that the refund had not yet been received. On February 9, 1927, after the expiration of the statutory period, the Commissioner wrote the taxpayer enclosing Form 843 and suggesting that a formal claim be made thereon setting forth the basis for the adjustment. The taxpayer executed Form 843 and stated that the refund should be allowed for the reasons given in the Commissioner's letter of November 19, 1924, a copy of which was attached to the form. This claim was forwarded to the Commissioner on February 17, 1927, received by the Commissioner on February 19, 1927, and allowed by the Commissioner on March 8, 1927, by approving and scheduling to the Collector a certificate of overassessment for $10,866.43.

The Collector credited $9,846.06 of this overpayment for the fiscal year 1919 against an additional assessment for the fiscal year 1917, which additional assessment at the time was barred by the statute of limitations. The Collector sent the taxpayer a check for the balance of $1,462.99, which the latter refused to accept.

The taxpayer sued to recover the overpayment of $10,866.43 for the fiscal year 1919 as determined by the Commissioner and shown in the certificate of overassessment issued by him. In defense, the government contended that the Commissioner's action in allowing the certificate of overassessment was illegal, because the taxpayer had not filed a claim for refund therefor within the statutory period. This Court held that the taxpayer could recover. While the point was made that the case

did not involve the question of the review of the Commissioner's action in rejecting a claim for refund, the language of the court is very broad and clearly applies to a case such as the instant one.

We quote from the opinion as follows:

> "Plaintiff filed its waiver within time and, in consideration of that, it admittedly secured the right to claim the refund. But it did not within the specified time formally make a claim for it. *The government's point comes down to the question whether the waiver and the letter transmitting it together with what went before amounted to the filing of a claim within the meaning of the statute.* (Italics ours.)
>
> "The Commissioner prior to that amendment had finally determined that in 1919 plaintiff had overpaid its tax by $10,866.43. That finding was made upon a consideration of the plaintiff's tax return, its claim for abatement of the jeopardy assessment and presumably all material details of its business in the taxable year. The schedule contained in the audit letter of November 19, 1924, showed the manner in which the bureau had computed the tax. And the refund of the ascertained overpayment was withheld by the Commissioner solely because of plaintiff's lack of compliance with Sec. 281 as it then stood.
>
> "The letter of May 16, 1925, sent soon after Sec. 281 was amended, unmistakably referred to the overpayment that the Commissioner had found and reported. That an allowance of credit or refund was immediately intended is shown by the statement that it could not then be allowed unless waiver was filed as provided by the 1925 amendment. Plaintiff's prompt

execution and return of the waiver and the bureau's acceptance of it clearly show that both considered the facts already found and reported a sufficient basis for plaintiff's claim. That such was the view of the Commissioner is fully confirmed by the notations made on the letter transmitting the waiver and upon the office record of the certificate.

"The question here is to be distinguished from that which would have arisen if, contrary to the taxpayer's insistence, the Commissioner had held that what was done did not constitute a filing of a claim. No statute provides for review of the Commissioner's determinations in favor of taxpayers when made within the scope of his authority. Such rulings are entitled to much weight. In this case he had already found that in 1919 plaintiff had overpaid its tax in the amount stated. He needed no additional information to enable him to determine whether credit or refund should then be made. There is no suggestion that the allowance was induced by or resulted from fraud or mistake. The facts found disclose that there was a reasonable or substantial compliance with the amendment. The Commissioner within the time allowed was advised of the grounds on which plaintiff's right to refund rested and was not misled or deceived by plaintiff's failure to file formal claim and was fully warranted in holding that the waiver and earlier documents were sufficient. *Tucker v. Alexander,* 275 U. S. 228, 231, 72 L. Ed. 253, 256, 48 S. Ct. 45."

We submit that the facts in the instant suit make a stronger case for the respondent than the facts in the *Bonwit Teller & Co.* case did for that tax-

payer. Here an official Form 843 was filed showing net income and net loss per books of the respective years; the Commissioner audited the taxpayer's books *in order to decide upon the merits of the respondent's claim for refund;* the taxpayer furnished such information to the Commissioner for that specific purpose; the Commissioner considered the evidence submitted in connection with the claims and found that the respondent's taxes were overpaid in the amounts for which this suit is brought, advising the respondent to that effect in two different letters in which he set out all the evidence on which his computations were made. There no formal claim on 843 was filed until long after the expiration of the statutory period; but the Commissioner's letter advising of an overassessment, the taxpayer's return, its claim in abatement, the filing of a waiver, and the general intent of the Commissioner and the taxpayer were held to be sufficient to form the basis of a claim for refund.

This Court has not passed upon the question of whether a suit may be maintained to recover taxes erroneously collected and paid where the evidence in support of the claim for refund is not presented in the claim itself but is presented to the Commissioner after the claim is filed and considered sufficient by him for the purpose of allowing the same,—except for the fact that such evidence was not presented in the claim itself.

In addition to being considered by the court below in the instant case (R. 38), the question was passed upon in *Union Trust Co. v. McCaughn,* 24

F. (2d) 459. In the latter case suit was brought on the issue that the Commissioner erroneously included the proceeds of certain life insurance policies in the gross estate. This ground was not presented in the claim for refund itself, but the Commissioner's rejection letter showed that it was presented in a brief filed with the Commissioner and that the question had been considered by him. The court held that the suit was maintainable, on the theory that the purpose of Sec. 3226 R. S., is to afford the Commissioner an opportunity to correct the errors made by his office and to spare the parties and the courts the burden of litigation in respect thereto. We quote in part from the opinion as follows:

> "If these objects have been attained, the statute has been sufficiently complied with, even though some of the grounds upon which the claim was made were not specifically set forth in the application. It is apparent from the letter of the Commissioner that he had before him the question now raised, and that he had full opportunity to reconsider and modify the ruling of his office, had he deemed the ruling erroneous. He also, of course, had the right to waive any defect or informality in the application for refund, and, in view of his letter, he will be held to have done so. I am therefore of the opinion that, so far as this requirement of the statute is concerned, the statement sets out a sufficient cause of action."

The petitioner contends that the Court of Claims in two recent decisions—*Electric Power & Light Corp. v. U. S.;* and *Johnson v. U. S.,* decided on

November 14, 1932, and printed in the Appendix, pp. 23-50 of the petitioner's brief in the case of *Factors & Finance Co. v. U. S.,* No. 141, qualified the scope of the opinion in the instant case. Irrespective of whether this contention is correct, and without discussing the merits of either of these cases, we desire to point out specifically to this Court that the Court of Claims did not in any degree qualify its opinion in so far as it applies to the facts in the instant case. As a matter of fact that Court emphasized the basis for the decision in the instant case below. We quote a portion of the opinion of the court in *Electric Power & Light Corp. v. U. S., supra,* as follows:

> "Plaintiff cites the decision of this court in *Memphis Cotton Oil Co. v. United States,* No. L-173 decided May 31, 1932, to support its contention that the claims filed in this case were sufficient. That case is not in point. There the taxpayer filed a claim setting forth the income which had been returned, and upon which the tax had been paid, the claimed correct net income or loss as per its books for the years involved, and claimed the refund of the resulting overpayments. Upon receipt of these claims the commissioner *for the purpose of deciding upon the merits thereof,* instructed his agent to make an investigation and obtain the facts with reference thereto from the taxpayer by an audit and examination of its books and records. This the agent did, and the taxpayer furnished him with information as to the nature of each item and all the facts in reference to the matter, and the agent thereupon made a detailed report of the facts and the nature of the various items to the commissioner, show-

ing overpayments for the years involved, together with an explanation of the nature of each item as furnished by the taxpayer. These overpayments were somewhat in excess of the amounts claimed in the refund claims theretofore filed. The commissioner found the overpayments to be as stated in the agent's report. These detailed facts and the nature of each item were furnished to the commissioner by the taxpayer through the commissioner's agent before the commissioner had taken any action upon the claims. In these circumstances the court held that the statements of the taxpayer in the claims filed, taken in connection with the facts and reasons furnished to the commissioner by the taxpayer through the commissioner's agent, were sufficient to form the basis of plaintiff's suit to recover the admitted overpayments. Had the commissioner not called for a statement of the nature of the claim and the facts with reference thereto, but had acted upon the claim and rejected it, no suit could have been maintained thereon. But having called for the facts in order to decide upon the claim, which facts were furnished by the taxpayer through the commissioner's agent, we fail to see wherein the situation was any different from what it would have been if the commissioner had asked the taxpayer direct to furnish the same." (Italics are the court's.)

In view of the foregoing we respectfully submit that the respondent's claims for refund on Form 843 for 1922 and 1923, together with the evidence which the respondent filed with the Commissioner in support thereof were adequate to form the basis of this suit, and that the decision of the court below is correct and should be affirmed.

II.

If the Respondent's Claims for Refund on Form 843, Together with Evidence Which the Respondent Furnished to the Commissioner in Support Thereof, Are Inadequate to Form the Basis of This Suit, Said Claims on Form 843 Together with Said Evidence, as Amended by the Respondent on April 2, 1929, Are Adequate to Form the Basis of Such Suit.

The petitioner contends that no amendment of the original claims for refund on Form 843 was attempted by the respondent. This is not correct. After receiving the Commissioner's letter of January 26, 1929, advising that respondent's claims for refund would be rejected because no evidence had been filed with the claims to support the same, the respondent specifically amended its said claims in a letter addressed to the Commissioner under date of April 2, 1929. This letter stated in part as follows:

> "While it would not appear to be necessary to amend the original claims filed for the years 1922 and 1923, after the commissioner had audited the books of the taxpayer and found the overassessments above referred to for said years, the taxpayer, however, does hereby amend its said claims for refund for 1922 and 1923, respectively, by specifically claiming the overassessments of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively, as outlined in the commissioner's said letter of October 13, 1928, a copy of which is attached hereto and made a part hereof."

(Court of Claims finding No. 9, R. 37; also R. 32, containing copy of this amendment.)

This amendment was made after the expiration of the statutory period for filing an original claim for refund for the respective years; *but prior to the Commissioner's rejection of the original claims on Form 843,* which occurred on October 23, 1929. (R. 37.)

The court below did not consider the effect of said amendment of April 2, 1929, because the court held that such amendment was unnecessary. (R. 39.) The issue, however, was raised by the respondent in Paragraph XIX of its petition filed in the Court of Claims in this case. (R. 12.)

In *McKesson & Robbins v. Edwards,* 57 F. (2d) 147, decided by the Circuit Court of Appeals for the Second Circuit, the taxpayer filed a claim for refund merely claiming "amortization of war facilities," which was rejected on December 23, 1925. The taxpayer filed a brief in support of its said claim, setting forth the grounds in detail. This brief was filed after the expiration of the statute of limitations for filing a claim for refund and there was also some question as to whether the brief was filed on December 1, 1925, before the rejection of the claim on December 23, 1925, or on January 14, 1926, subsequent to the rejection of said claim. Irrespective of this, however, the Commissioner considered the brief, and on March 27, 1926, advised the taxpayer that its claim would be rejected.

In defense of the suit, the government contended (1) that the suit was not instituted within two

years after the rejection of the claim; and (2) that the claim was inadequate upon which to base the suit.

Whether the suit was brought within two years after the rejection of the claim depended upon whether it was finally rejected on December 23, 1925, or on or after March 27, 1926. The court held that the rejection of December 23, 1925, was not final in view of the fact that the Commissioner considered the brief subsequent thereto and advised the taxpayer on March 27, 1926, that its claim would be rejected. The court, consequently, held in favor of the taxpayer on that issue.

On the second point the court held that the claim for refund on account of "amortization of war facilities" could be amended after the expiration of the statute of limitations for filing claims if it had not been finally rejected prior to such amendment. We quote in part from the opinion as follows:

> "A final question is as to the sufficiency of the claim which stated no more as a ground for the refund than the phrase, 'amortization of war facilities.' This did not satisfy the regulations, and the claim could have been rejected for that reason without consideration of the merits. Yet it was more than a mere caveat, an effort to hold open the time for a claim in the future, like those considered in *United States v. Felt & Tarrant,* 283 U. S. 269; *Art Metal Const. Co. v. U. S.,* 47 F. (2d) 558, and *U. S. ex rel. Endicott v. Mellon,* 59 App. D. C. 255; it did state a ground, though defectively. It seems to us that in such a case the taxpayer may amend even though the amendment is filed after the period for filing has ex-

pired. We have indeed found no case to that effect except *Lehigh & Wilkes Barre Coal Co. v. U. S.*, 38 F. (2d) 637; and it appears to be settled that after rejection, amendments are too late. *Sugar Land Ry. Co. v. U. S.*, 48 F. (2d) 973; *Mutual Life, etc. Co. v. U. S.*, 49 F. (2d) 662; *Wausau, etc. Co. v. U. S.*, 49 F. (2d) 665; *Connell v. Hopkins*, 43 F. (2d) 773. But the distinction between what will bear amendment and what will not, is common throughout the law; it is no doubt one of degree, like most else, but there seems no reason not to apply it here.

"Hence, if the brief was filed on December 1, 1925, and was enough in substance, the claim was amended; it was good. This would not have been true, if it was filed on January 14, 1926, except for its acceptance by the Commissioner. The same reasoning applies here as to the point just preceding. He might have declined to take it at all and the case would have been at an end, like *Solomon v. U. S.*, 57 F. (2d) 150, which we decide herewith; he is not obliged to reconsider claims once rejected: But he received it and acted upon it, and he must be supposed to have done so in the exercise of a discretion with which he is vested. Having done so, it became an amendment, and must be taken as such in any action which reviews his conclusion. Hence we hold that the claim was sufficient, whenever the brief was filed."

In *McKesson & Robbins v. Edwards, supra,* Judge Learned Hand distinguished that case from that of *Art Metal Construction Company v. United States,* 47 F. (2d) 558, the opinion of which he also wrote. In the latter case the claim stated:

"This claim is filed pursuant to the provisions of Section 252 of Act of 1921 for the refunding of any sum which by reason of future court cases, treasury rulings, or other reasons it may appear has been illegally or erroneously assessed or collected. The purpose in submitting this claim is to protect the taxpayer's rights in respect of the time within which such claims must be filed."

No mention was made of special assessment until July 6, 1925, after the expiration of the statute for filing claims, when a brief was filed claiming special assessment. In 1927 the Commissioner decided that the taxpayer was entitled to special assessment and held that the claim for refund therefor was too late. The Court held for the government and said in part:

"The supposed claim was no claim at all; it was a mere caveat, an attempt to reserve the taxpayer's right at some later time to file a claim, should something turn up, either because of a change in the rulings of the courts, or of the Department, or for any other reason which might lead him to suppose that he could get back what he had already paid. We are not therefore dealing with a claim ineffectually couched, which advised the Commissioner that the taxpayer had come to doubt the validity of any part of the tax. In such cases we may assume arguendo that much latitude would be allowed, not only to amend as to the amount demanded, but to amplify the grounds of the claim, and perhaps to set out others. * * *

"Moreover, we cannot agree that such a claim can be pieced out by matter in pais, cer-

tainly when it is no more than a general reservation of all future claims. Whatever the purpose of the statute, it is at least to advise the Commissioner that the taxpayer intends by it to assert that a part of his tax was never due. To allow him to substitute, not a claim, but a warning that he may in the future make a claim—which is all on any theory that the supposed claim was—substantially dispenses with the statute altogether. Presumably, it was to avoid exactly such resulting uncertainties that the act and the regulations required something definite enough for action. The claim called for, and indeed admitted, no action at all. Therefore the Commissioner was not bound to return it. It bore no evidence that the plaintiff had any present complaint in mind; there was no intimation until after April 1, 1925, that anything had happened which had caused it to doubt any item of the tax which it had itself computed and paid. Patently, the claim was nothing but an effort to extend the time which the statute had given; an effort which the Commissioner was no more bound to repudiate, than if it had expressly asserted such a right, as perhaps indeed it did."

Similar purported claims were involved in *Zeller v. U. S.*, 46 F. (2d) 1023; and *U. S. ex rel. Endicott v. Mellon*, 39 F. (2d) 505, which the courts held were not claims at all, and, consequently, were not subject to amendment after the statutory period for filing claims expired.

The question of whether a timely claim for refund may be amended before rejection but after the expiration of the statute of limitations for the

filing of a claim for refund, is before this court in *U. S. v. Factors & Finance Co.,* No. 141; and *U. S. v. Henry Prentiss & Co., Inc.,* No. 234, which are set down for argument just preceding the instant case. The courts below in those cases held that a claim under such circumstances could be amended. The Court of Claims also held to the same effect in *Swift & Co. v. U. S.,* 67 Ct. Cl. 322.

The court below rightly held that "The claims for refund as originally filed by the plaintiff gave the Commissioner jurisdiction over the matter of an overpayment for the year for which the claims were filed." After filing said claims the respondent furnished to the Commissioner the necessary detailed evidence in support thereof *in order that the Commissioner might decide upon the merits thereof.* Clearly the respondent had the right to amend these claims after the expiration of the statute of limitations for the filing of claims, if such amendment were necessary, which we do not admit; but if amendment were necessary, the amendment of April 2, 1929, unquestionably perfected said claims, and such claims as amended are adequate for the purpose of this suit.

CONCLUSION

The decision of the court below is correct and should be affirmed.

Respectfully submitted,

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APPENDIX

Section 284 (a) and (b) of the Revenue Act of 1926, provide:

> (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.
>
> (b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—
>
> (1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this Act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior Act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and

(2) The amount of the credit or refund shall not exceed the portion of the tax paid during the three or four years, respectively, immediately preceding the filing of the claim, or if no claim was filed, then during the three or four years, respectively, immediately preceding the allowance of the credit or refund.

Section 3226, Revised Statutes, as amended by Section 1318, Revenue Act of 1921, provides as follows:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

Article 1036, Treasury Regulations 62, promulgated under the Revenue Act of 1921, provides:

> ART. 1036. *Claims for refund of taxes erroneously collected.*—Claims by the taxpayer for the refunding of taxes and penalties erroneously or illegally collected shall be made on Form 843. In this case the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. In the case of the taxpayer's death, certified copies of the letters of administration or letters testamentary, or other similar evidence, must be annexed to the claim to show the authority of the administrator or executor.
>
> The affidavit may be made by an agent of the person assessed, but in such a case a power of attorney must accompany the claim. Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and shall, unless otherwise directed, be sent directly to the proper persons. The Commissioner has no authority to refund on equitable grounds penalties legally collected. As to claims for refund of sums recovered by suit see Article 1051.

(T. D. 4265)

Internal Revenue Taxes
Regulations Applicable to Claims for Credit and Refund

Treasury Department,
Office of Commissioner of
Internal Revenue,
Washington, D. C.

To All Collectors of Internal Revenue and Others Concerned:

(1) A claim for refund or credit of any internal-revenue tax, or for refund of interest or penalties, erroneously or illegally collected, should be made on the form prescribed by the Treasury Department (Form 843) and should be filed with the collector of internal revenue, although a claim will not be considered defective solely by reason of the fact that it is not made on the form or that it is filed with the Commissioner of Internal Revenue. The claim must set forth in detail and under oath each ground upon which a refund or credit is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. Any claim which does not comply with the requirements of the preceding sentence will not be considered for any purpose as a claim for refund or credit.

(2) No refund or credit will be allowed after the expiration of the statutory period of limitations applicable to the filing of a claim therefor except upon one or more of the grounds so set forth in a claim, or an amendment thereof, filed prior to the expiration of such period.

(3) These regulations shall take effect on May 1, 1929, and shall be applicable to all claims filed on or after such date, and all other regulations are modified in so far as they are inconsistent with these regulations.

D. H. BLAIR,
Commissioner of Internal Revenue.

Approved March 27, 1929:
A. W. MELLON,
Secretary of the Treasury.

CORRECTED COPY page. 3,

SUPREME COURT OF THE UNITED STATES.

No. 308.—October Term, 1932.

The United States of America, Petitioner, vs. Cotton Memphis Oil Company, Respondent.	On Writ of Certiorari to the Court of Claims.

[January 9, 1933.]

Mr. Justice Cardozo delivered the opinion of the Court.

Respondent, the plaintiff in the court below, brought suit against the United States in the Court of Claims to recover overpayments of income taxes for the years 1922 and 1923. The government opposed recovery upon the ground that the claims filed with the Commissioner of Internal Revenue for the refund of the tax were too general and indefinite to comply with the provisions of the statutes and regulations, and that amendment came too late. The Court of Claims gave judgment in favor of the taxpayer. 59 Fed. (2d) 276. A writ of certiorari brings the case here.

The central question in the controversy can be stated in a sentence: May a claim for a tax refund which has been seasonably filed, but which fails to state the grounds upon which the refund is demanded, be amended by specifying the grounds at any time before the claim in its original form has been finally rejected, though it be after the time when a wholly new claim would be barred by limitation?

The respondent made and filed its income tax returns for 1922 and 1923 in accordance with the statute. It paid the last instalment of the earlier tax on December 7, 1923, and the last instalment of the later one on December 6, 1924. Claims for refund of overpayments were filed in June, 1927, within the time prescribed by law.

In the refund claim for 1922 there was a statement of the amount of the tax paid ($25,626.25), a statement of the correct amount due ($24,296.56), a statement that there had been overpaid in error $1,329.69, and a request for refund of that amount with interest as provided by law, or such greater amount as might be legally refundable. Attached to the claim was the following summary of

the method of computation: net income, $194,372.46; 12½ per cent, $24,296.56; previously paid, $25,626.25; overpaid, $1,329.69. There was no other specification of supporting facts or reasons.

In the refund claim for 1923 the claimant followed the same form that was used for 1922, but with appropriate changes of the figures. The overpayment was stated to be $1,813.39, and there was a request for the return of that amount or of any greater amount due.

Upon receipt of these claims, the Commissioner of Internal Revenue, in order to pass upon the merits, made an investigation and an audit of the claimant's books and records for 1922 and 1923 through a duly appointed agent. The agent reported to the Commissioner that there had been overassessments for both years, the excess being fixed at $1,660.70 for 1922 and $4,835.76 for 1923. Thereupon a Deputy Commissioner notified the taxpayer in writing under date of October 13, 1928, that its refund claims had been considered, that the taxes had been readjusted in accordance with the new audit, and that the overassessments for the two years would be made the subject of certificates of overassessment, which would be transmitted in due course through the office of the appropriate collector. Nothing further was said or done as to the matter till January 26, 1929, when the same Deputy Commissioner who had signed the notice last mentioned, transmitted to the taxpayer another notice that the claims were defective in form in that they failed to satisfy the requirements of the Treasury Regulations. After quoting the pertinent provisions, he stated: "Since the information on file with the claims does not meet the requirements" of the regulations, "and the claims do not indicate [*i. e.*, apart from the investigations of the Revenue Agent] that the taxes have been illegally assessed, they will be rejected. The rejection will officially appear in a schedule to be approved by the Commissioner." Thereupon the claimant, protesting that an amendment was unnecessary, filed a new claim with the Commissioner on April 2, 1929, in which the facts were set forth in detail. The Commissioner gave final notice of rejection on October 23, 1929, placing his ruling on the ground that the claims as first presented were defective and irregular. In this suit by the taxpayer, the Court of Claims has given judgment for the moneys overpaid.

Statutes make it necessary that claims for the refunding or crediting of any internal revenue tax erroneously or illegally as-

sessed or collected shall be presented to the Commissioner within a prescribed period of time and prohibit allowance of the claims if these conditions are not satisfied. Revenue Act of 1926, § 284 (b). Statutes also provide that no suit or proceeding shall be maintained in any court for the recovery of such a tax "until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof." Revenue Act of 1921, § 1318 as amended by Act of March 4, 1923, c. 276. During the period of these transactions, there had been promulgated under the Revenue Act of 1921 and was continuously in force a treasury regulation which provides as follows: "Claims by the taxpayer for the refunding of taxes and penalties erroneously or illegally collected shall be made on Form 843. In this case the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath." Treasury Regulations 62, Article 1036.[1]

The claim for refund filed with the Commissioner in June, 1927, was not subject to rejection on the score of the time of its submission. As to this the parties are agreed. Indefinite and general it was, and hence, until amended or supplemented, an inadequate compliance with the Treasury requirement that the facts relied upon in support of a claim are to be stated under oath. Beyond doubt it might have been rejected as irregular while its form was uncorrected. This is far from saying that there was the presentation of a new claim and not the perfecting of an old one when the gaps were filled thereafter.[2]

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[1]A later regulation, different in form, is applicable to claims filed on or after May 1, 1929. Treasury Decision 4265, Cumulative Bulletin VIII—1, p. 110.

[2]Official statistics indicate that "eighty-five 20/100 per cent of all the overassessments are attributable to clerical or bookkeeping adjustments or to causes beyond the control of either the Treasury or the taxpayer, that is to adjustments after the payment of taxes based upon causes which could not fairly be considered prior to the payment." Refunds and Credits of Internal Revenue Taxes, Report of the Joint Committee on Internal Revenue Taxation, 1929, pursuant to § 710 of the Revenue Act of 1928, H. Doc. No. 43, Supplement to Part II, p. 29. Cf. H. Doc. No. 478, 71st Cong., 2d Sess. (1930). These statistics, covering adjustments of taxes under the Act of 1928, give support to the conclusion that in determining the application of a statute of limitations the word "claim" should be interpreted with reasonable liberality.

Both the government and the taxpayer invoke analogies suggested by pleadings in a lawsuit. The general rule is said to be that an amendment of a pleading will take effect by relation and thus relieve against the bar of an intervening limitation if the identity of the cause of action is still substantially the same, but that the limitation will prevail if under the guise of an amendment there is the substitution of a new cause of action in place of another wholly different. *B. & O. S. W. R. Co.* v. *Carroll*, 280 U. S. 491; *Seaboard Air Line Ry.* v. *Renn*, 241 U. S. 290, 293; *Harriss* v. *Tams*, 258 N. Y. 229, 242. The analogy is helpful, yet it will confuse, instead of helping, if we do not insist at the beginning upon a definition of our terms or at least a recognition of their shifting meanings. A "cause of action" may mean one thing for one purpose and something different for another.[3] It may mean one thing when the question is whether it is good upon demurrer, and something different when there is a question of the amendment of a pleading or of the application of the principle of *res judicata*. Cf. *Chicago R. I. & P. Ry. Co.* v. *Schendel*, 270 U. S. 611, 617; *Baltimore S. S. Co.* v. *Phillips*, 274 U. S. 316, 321. At times and in certain contexts, it is identified with the infringement of a right or the violation of a duty.[4] At other times and in other contexts, it is a concept of the law of remedies, the identity of the cause being then dependent on that of the form of action or the writ.[5] Another aspect reveals it as something separate from writs and remedies, the group of operative facts out of which a grievance has developed.[6] This court has not committed itself to the view that the phrase is susceptible of any single definition that will be independent of the context or of the relation to be governed. None the less, it has fixed the limits of amendment with increasing liberality. A change of the legal theory of the action, "a departure from law to law," has at times been offered as a test. *Union Pacific Ry. Co.* v. *Wyler*, 158 U. S. 285, 295. Later decisions have made it clear that this test is no longer accepted as one of general

[3]The uncertainties of the phrase have been well developed by Dean Clark with full citation of the decisions in his treatise on Code Pleading, pp. 75-87, 501-508.

[4]Clark, Code Pleading, p. 81 and cases there cited. Pomeroy, Code Remedies, 4th ed., § 347.

[5]Clark, *supra*, p. 502, and cases there cited.

[6]Clark, *supra*, pp. 83, 84, 505, and cases there cited.

validity. Thus, in *Missouri, Kansas & Texas Ry. Co.* v. *Wulf*, 226 U. S. 570, plaintiff suing in her individual capacity under a Kansas statute for her son's death was allowed to amend to sue as administratrix under the Federal Employers' Liability Act after the statute of limitations would have barred another action. In *New York Central Railroad Co.* v. *Kinney*, 260 U. S. 340, there was in substance the same ruling. In *Friederichsen* v. *Renard*, 247 U. S. 207, a cause of action by a defrauded buyer to set aside a contract was turned into a cause of action to recover damages for deceit. "Of course an argument can be made on the other side, but where a defendant has had notice from the beginning that the plaintiff sets up and is trying to enforce a claim against it because of specified conduct, the reasons for the statute of limitations do not exist, and we are of opinion that a liberal rule should be applied." *New York Central Railroad Co.* v. *Kinney, supra*, p. 346.[7]

With this background of analogy, we reach the specific problem that calls for answer here. The respondent filed a claim for taxes overpaid, a claim for money had and received to his use by the agents of the government. The identity of the cause of action may be said in one aspect to depend upon the mere fact of overpayment, the existence of a net balance owing to the taxpayer after the ascertainment of all items of debit and of credit. In another aspect it may be said to depend upon the identity of the items illegally exacted, and hence upon the particular grounds that determine illegality. Choice between these meanings must avoid a doctrinaire adherence to abstract definitions. It must keep in view the realities of administrative practice, for its effect will be to regulate the conduct of administrative officers. Definitions and analogies borrowed from pleadings in a lawsuit will have their place and recognition, but in due subordination to differences of end and aim. Viewing the problem thus, we must say whether a statement by the taxpayer of supporting facts and reasons is to be assimilated to a bill of particulars explanatory of a claim, or is something so essential that there can be no claim without it.

Our decision in *Lewis* v. *Reynolds*, 284 U. S. 281, goes far to point the answer. The court there ruled that upon a claim for the refund of a tax because of the disallowance of a particular deduction, the Commissioner might sustain the result by the dis-

[7]Other cases are collected by Clark, *supra*, pp. 504, 505.

allowance of another deduction, and this though the time had gone by within which he would have been at liberty, if a claim had not been filed, to make a new assessment. The court applied the analogy of a common law action for money had and received. "The ultimate question presented for decision upon a claim for refund, is whether the taxpayer has overpaid his tax. This involves a redetermination of the entire tax liability." No matter though the claim for refund be specific and limited, the Commissioner is at liberty to audit the return afresh and to strike a new balance as the facts may then appear. Commonly, though, it seems, not always, a general audit will be necessary or will be at least a wise precaution, whether the claim is broad or narrow, if the government is to have the benefit of any compensating adjustments.[8] There is little doubt that this conception of duty and of prudence has had recognition and emphasis in administrative practice.

The practice is portrayed in action in the pages of this record. We are there informed in a striking way of the actual procedure where a notice, general in its terms, is not rejected at the beginning for irregularity of form, but is considered on the merits. At once upon the filing of the claim for refund, there was an order for the complete examination of the business of the taxpayer, to the end that the net amount of its tax liability might be reported to the Bureau. Every claim put forward in its amended notice has been investigated, every fact alleged in its behalf has been verified and found. The files of the Bureau contain the report of an examiner informing his superior that the tax has been overpaid, and the files of the taxpayer contain an official notice that the overassessment is recognized and that justice will be done. Of a sudden, at the end, the discovery is made that the inquiry is mere futility because the notice starting it in motion has departed in form from the requirements of a rule.

In the light thus supplied by the practice of the Bureau and the analogy of pleadings, the way is cleared for a conclusion. The line of division must be kept a sharp one between the function of a statute requiring the presentation of a claim within a given period of time, and the function of a regulation making provision

[8]Compare Report of the Joint Committee on Internal Revenue Taxation, 1928, pursuant to § 1203 of the Revenue Act of 1926, vol. III, pp. 25, 30.

as to form. The function of the statute, like that of limitations generally, is to give protection against stale demands. The function of the regulation is to facilitate research. The Commissioner has the remedy in his own hands if the claim as presented is so indefinite as to cause embarrassment to him or to others in his Bureau. He may disallow the claim promptly for a departure from the rule. If, however, he holds it without action until the form has been corrected, and still more clearly if he hears it, and hears it on the merits, what is before him is not a double claim, but a claim single and indivisible, the new indissolubly welded into the structure of the old.

The cases in this court are not at all at variance with the conclusion now arrived at, though they leave the problem open. *Tucker* v. *Alexander*, 275 U. S. 228, holds that it is within the power of the Commissioner to waive the objection that the supporting facts or reasons have not been stated in the claim. *United States* v. *Felt & Tarrant Co.*, 283 U. S. 269, holds that a defective claim for refund will not supply a basis for a suit against the government when there has been neither waiver by the Commissioner nor amendment by the taxpayer. *Bonwit Teller & Co.* v. *United States*, 283 U. S. 258, holds that a letter from the taxpayer, accompanied by a form of waiver requested by the Bureau, will be the equivalent of a notice of claim if the Commissioner has so treated it.

The cases in the lower federal courts may not be wholly harmonious as to the extent to which amendments are allowable after the running of the statute, but there is general agreement that the applicable analogy is to be found in the rules governing the amendment of a pleading. *McKesson & Robbins, Inc.* v. *Edwards*, 57 F. (2d) 147; *Art Metal Construction Co.* v. *United States*, 47 F. (2d) 558; *Lancaster Cotton Mills* v. *United States*, 59 F. (2d) 270; *Lehigh & Wilkes Barre Coal Co.* v. *United States*, 38 F. (2d) 637. Cf. *The Peruna Co.*, 11 B. T. A. 1180, 1189; *Marian Shainwald Sevier*, 14 B. T. A. 709, 716.

One other question, less general in its significance, is yet to be considered. An argument is made that at the time of this amendment the claim had been finally rejected and the proceeding thereby ended. If so, it was too late. *McKesson & Robbins* v. *Edwards, supra; Solomon* v. *United States*, 57 F. (2d) 150.

When correction is thus postponed, there is no longer anything to amend, any more than in a lawsuit after the complaint has been dismissed. We think the matter was still *in fieri*. True the Deputy Commissioner had given notice to the taxpayer that the claims would be rejected, and that the rejection would be officially announced in a schedule to be approved thereafter. No reason is apparent why at any time before such approval the Commissioner or his Deputy was not at liberty to recall the first announcement, and dispose of the case otherwise. *Michel* v. *United States*, 37 F. (2d) 38, reversed, but on other grounds, 282 U. S. 656. We are not now considering what the practice ought to be if there were need to open the proceeding for the submission of other evidence extrinsic to the claims themselves. Neither in the record nor in the argument do we find a suggestion of that need. Long before the amendment the Commissioner had ascertained the facts and had even notified the taxpayer of the justice of its claims and of the ruling of the Bureau that adjustments would be made accordingly. The dismissal of the claims, when finally announced, was for defects of form only. The defects had been corrected, and the dismissal may not stand.

We find it unnecessary to determine whether the conduct of the Commissioner in investigating the claims upon their merits and reporting to the claimant the result of his inquiry was a waiver of defects of form which would call for the return of overpayments though no amendment had been offered.

The judgment is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.